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**Constitutions  
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# **Constitutions of the World**

**M.V. PYLEE**

*Director General, Asian Institute of Development and Entrepreneurship*

*Former Vice Chancellor, University of Cochin*

*Member, Press Council of India*

*Chairman, Guruswamyarappan Institute of Management*

*Member, National Board of Accreditation, AICTE*

*Member, All India Board of Management, AICTE*

*Member, Board of Management, Manipal Academy of Higher Education*

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***"Constitutions are intended to preserve practical and substantial rights, not to maintain theories."***

Oliver Wendell Holmes  
Davis v. Mills, 194 U.S. 451, 457 (1901)

***"Those three great institutions, Parliament, the Press and the Judges, are safeguards of justice and liberty; and they embody the spirit of the constitution."***

Lord Denning, The Changing law, 1953, p. 18



## CONTENTS

	<i>Page</i>
<i>Introduction by Prof. M.V. Pylee</i>	ix
1. Constitution of Albania	1
2. Constitution of Argentina	13
3. Constitution of Australia	43
4. Constitution of People's Republic of Bangladesh	71
5. Constitution of Belgium	139
6. Constitution of Bosnia and Herzegovina	179
7. Constitution of Brazil	193
8. Constitution of Cambodia	309
9. Constitution of Canada	326
10. Constitution of People's Republic of China	340
11. Constitution of Kingdom of Denmark	371
12. Constitution of Arab Republic of Egypt	387
13. Constitution of France	415
14. Constitution of Federal Republic of Germany	437
15. Constitution of India	493
16. Constitution of Republic of Indonesia	729
17. Constitution of Islamic Republic of Iran	735

18	Constitution of Republic of Iraq	770
19	Constitution of Ireland	783
20	Constitution of Republic of Italy	817
21	Constitution of Japan	848
22	Constitution of Kuwait	861
23	Constitution of Republic of Namibia	885
24	Constitution of Kingdom of Nepal	939
25	Constitution of Netherlands	994
26	Constitution of Norway	1018
27	Constitution of Islamic Republic of Pakistan	1039
28	Constitution of Commonwealth of Puerto Rico	1163
29	Constitution of Russian Federation	1182
30	Constitution of Kingdom of Saudi Arabia	1214
31	Constitution of Singapore	1222
32	Constitution of South Africa	1317
33	Constitution of Republic of South Korea	1441
34	Constitution of Spain	1466
35	Constitution of Sri Lanka	1514
36	Constitution of Sweden	1578
37	Constitution of Swiss Confederation (Switzerland)	1606
38	Constitution of United Kingdom	1652
39	Constitution of United States of America	1675

## INTRODUCTION

*Constitutions of the World* is a unique publication consisting of 39 constitutions of the world. From Albania to the United States of America it covers a wide spectrum. There are constitutions whose texts run into hundreds of pages. At the same time there are others which are quite brief. For example, the Constitution of India is reputed to be the longest whereas the Constitution of the United States of America is the shortest. Barring a few, most of the constitutions included in this volume are framed in the post second world war period.

Constitutionalism is one of the most important theories of political science. It has a history of over two thousand years. The famous work of the Greek Philosopher Aristotle on Politics was the result of his year-long study on a large number of constitutions which existed in the Greek City States or Republics of his time. India too had similar republics which were in existence in the northern parts of the country more than two thousand years ago. It was perhaps true that the ideals of democratic Government and republican institutions were first conceived and practised a thousand years before Christ when the people of Mithila established the world's first Republic. Historical evidence indicates that in the days of Buddha or even earlier, certain types of democracy did flourish in parts of India. But the republics of those days were confined to small areas, tribes and clans and operated in highly decentralised manner. The system could not, however, withstand the pressure of monarchical ideas based on centralisation of power and republican institutions succumbed to their onslaught. What happened in Greece, Rome and West Asia was more or less the same pattern, small independent republics giving way to the territorial ambitions of Kings and Emperors. That position continued for centuries until the emergence of the United States of America as a republic with a written Constitution a little over two centuries ago.

### Constitution defined

What is a Constitution? A Constitution is a set of laws and rules setting up the machinery of the Government of a State and which defines and determines the relations between the different institutions and areas of Government, the Executive, the Legislature and the Judiciary, the Central, the Regional and the Local Government. In fact, a Constitution is the source, the jurisprudential fountain head from which other laws must flow, succinctly and harmoniously.

The first well-known instance of a written Constitution was that of the United States of America which set up an original pattern, and which for its "brevity, restraint and simplicity" is universally hailed as a remarkable document. The makers of many other constitutions followed many of its provisions though not its brevity. The Constitution of India is one such document. It is said that the Constitution of India which is the longest of its kind, represents the political, economic and social ideals and aspirations of

the vast majority of the Indian people of that time (1947-49) when the Constitution was framed. This is more or less true of all constitutions.

Napoleon once told Talleyrand, his leading political adviser, soon after establishing himself as the undisputed ruler of revolutionary France

"France must have a Constitution. It should be short, it should be clear."  
To this the ingenious Frenchman, Talleyrand, countered "No Sire, it should be long and obscure!"

Most of the constitutions of the world follow the first advice of Talleyrand, they are almost invariably long. Until the breakup of the Ugoslavian Republic in the late nineties of the twentieth century, the Constitution of Ugoslavia with over four hundred articles had been the longest. That Constitution is no more in existence. Today the longest Constitution is that of India. The Constitution of India as it was originally passed had 395 Articles and nine Schedules, making it the longest.

The Constitution is the creation of a sovereign act. It is the result of extraordinary legislation direct from the people acting in their sovereign capacity enabling a government structure to be set up, laying down the methodology and extent of the distribution of its powers, the methods and principles of its operation as well as embracing the spirit of a nation. Ordinary laws (as distinct from those rights and duties enshrined in the Constitution) are enacted to meet certain contingency or certain situations or areas ('spheres of human interaction') whereas the Constitution is framed for ages to come and is designed to approach immortality as near as human institutions can approach [*Madbury v Madison*, (1803) 1 Cranch 137]. The supremacy of Constitution is undisputed and cannot be challenged in a court of law. Any law made by the legislature if repugnant to the Constitution will be void [*Gompers v United States*, (1914) 233 US 604 (610)].

The supremacy of the Constitution lies mostly in its indestructible nature. While being eternal the law enshrined in the constitution may have to adapt itself to the changing times. As illustrated by the celebrated American jurist Oliver Wendell Holmes, 'The Constitution is not a document of fastidious dialectics, but means of ordering the life of a people. It is an organic growth' [*Gompers v United State*, (1914) 233 US 604 (610)].

While embarking upon the study of comparative constitutional law, the most important differential contrasts must be remembered. While a statute is a mere legislative enactment in the usual process of legislation, the Constitution is a constituent act forming the fundamental or organic law of the land to which all other laws made by legislature must conform. In the core of Kelsenian theory, the Constitution would be equivalent to the 'grund norm' or the basic rule. Hans Kelsen illustrated and emphasized this point (aspect) in his own writings. 'The 'grund norm' (the Constitution) is not created by legal procedure or by a law creating organ. It is not as a positive legal norm valid, because it is created in a certain way by a legal act, but it is valid, because it is pre-supposed to be valid, and it is pre-supposed to be valid because without this pre supposition no human act could not be interpreted to be legal, specially as a norm-creating act. In other words, the validity of the

Constitution generally lies in the social fact of its being accepted by the community and for the reasons that its 'norms' have become efficacious. Its validity is meta-legal' [Hans Kelsen, *General Theory of Law and State*] in countries where a written Constitution exists, it is approximately time to say the Constitution itself provides such a supreme norm [Stanley I Stein on the uses of Sovereignty (*Defence of Sovereignty*) pp 67, 70]. It is now universally accepted that the Constitution is, in every sense and circumstances, the supreme law, the law-makers being the people themselves in whom the residuum of political power and sovereignty resides [Hans Kelsen, *General Theory of Law and State*, p 116].

### What is the need for a Constitution?

Scholars and students of comparative constitutional law have attempted to answer this question in two ways. First, the answer probably along the lines of a social contract situation, the Constitution being the natural desire of a politically organized people to have enduring law - setting out the structure of the government of the nation and organizing governmental functions. This structuring and demarcation is essential for the stability of governance and the rule of law within a nation. Second, the new start by nations in the post-colonial era. Many people under colonial rule mandated to make a start *de novo* and structured a Constitution accordingly. An illustration in this respect can be traced to the Indian Constitutional history. On the peaceful transfer of power by the British Government to the Indian people under the Indian Independence Act, 1947, the Indian people who wanted to make a new and determined start, structured a Constitution and gave it unto themselves. Every country has aspirations which are particular and personal to its people, a distinctive tradition and culture as well as its own problems. As individuals as the people, people of a nation would naturally desire a Constitution which would enable them to fulfill their aspirations. The law of the Constitution is and must be in all cases individually structured and engineered to be the supreme law of the State which is the Kelsen 'grund norm' to govern the life of the nation. The working of the Constitution, the way it adapts to future challenges would depend upon the thoughtful persistence of the people whose life it regulates. A Constitution must grow with the growth of the nation. A comparative study will reveal provisions in every Constitution for change and growth. Readers as they move along with the book will note both pros and cons, too rigid a Constitution which is unalterable by nature is as dangerous as one which is easily alterable. Not only constitutions themselves but the process by which they can be adapted require restructuring or moulding to changed circumstances. In the ultimate analysis, a Constitution must adapt itself to the changing need of the time [K.C Wheare, *Modern constitutions*, PP 98-99].

### Constitutional obligations of the judiciary

A written Constitution is enabled by the judiciary which upholds the basic structure of the written draft. The basic tenets of the Constitution are upheld by the three organs of government each one acting independently of

the other for the common good. The great Roman Orator, Cicero, said "the chief law is public good." This maxim summarizes the entire reason for the entrustment of certain powers to each one of the three separate wings of governance. For the purpose of the proper "implementation of the rule of law," the interpretation the judiciary makes has to be aligned with the basic structure of the Constitution.

Judicial creativity must fill the gap between the existing law and the law as it ought to be. The Constitution as the grund norm should be interpreted according to current societal standards. Complete justice or true justice must encompass within its morality and ethics. The interpretation of laws has to be purposive. This means the interpretation must subserve the object of the enactments of the law keeping in view the supreme law, the grund norm, the Constitution. Every law has to accord with the Constitution, otherwise it suffers the defect of invalidity or un-constitutionality and, therefore, even while constructing statute law, one must always bear in mind the provisions of the Constitution, the constitutional goals and the constitutional purpose which is sought to be achieved.

The basic and integral scheme of separation of powers requires conferment of the power of judicial review in the judiciary. That is an acknowledged basic aspect of (world) constitutions and constitutionalism. Judicial review, as originally conceived, is generally understood to emanate from the judgment of Chief Justice Marshall in the American Supreme Court in *Marbury v. Madison* in the year 1803. It was strongly resented by the other wings. Nevertheless, it had been forgotten that two centuries before Chief Justice Marshall it was Lord Coke who had said the same thing in Dr. Bonham's case. Now it is an acknowledged basic feature of the Constitution. That is the significance of the role of the judiciary envisaged by constitutions across the globe.

It is expected that the judiciary would keep everyone within the bounds indicated by the Constitution. But the bounds are equally applicable to the judiciary itself and the Constitution has entrusted the judiciary with the additional task of not merely keeping everyone else within bounds, but also remaining within bounds. The judiciary is empowered to perform certain functions and discharges only a delegated function. A delegate can never claim to be superior than the principal. Also for achieving the purpose of ensuring socio-economic justice by enabling constitutional mechanisms, proper access to the courts is important. The requirement is speedy justice, an area in which the constitutions of the world have some serious thinking to do.

The powers which are constitutionally delegated to the judiciary, are not provisions meant for personal aggrandizement. They are meant to subserve the constitutional purpose and to uphold the majesty of the law. True respect, lasting admiration and justification for being placed at the highest level has to be earned by the people. It is not to be exhorted from them by instilling the fear of the contempt power. Lord Denning said, in the year 1968, that respect for judge must rest on surer foundations than mere exercise of the contempt power. The contempt power is there to keep in check the recalcitrant, to

punish the incorrigible and the adamant only for the purpose of upholding the majesty of the law and not for the judge's [personal majesty]

While studying comparative constitutional law, no one doubts that the independence of the judiciary is a must. It is essential for the proper administration of justice. Care has to be taken in constitutions worldwide to ensure independence of the judiciary.

The full import or meaning of the expression independence of the judiciary is often not realized. There are many facets to it. Independence of the judiciary does not mean merely independence from outside influences, but also from those within. "Be you ever so high, the law is above you". The judiciary has to remember that this is not meant only for others. It applies equally to the judiciary with the added responsibility which one has of implementing it on themselves. Failure to do so would result in the erosion of credibility and the independence of the judiciary. The only cure is the one envisaged by the constitutions the world over, accountability to the same law, accountable to the same standards set up for others.

Constitutions would have to perfect in-house procedures for the higher judiciary. Unaccountability is not the order of any Constitution. It is an antithesis to basic democracy and fundamental democratic principles, and therefore, for the preservation of the independence of the judiciary it is necessary to ensure judicial accountability at all levels.

#### **The written Constitution. Analysing content: freedom and equality**

In countries which have written constitutions, such as the United States, Canada, Australia or India, judicial decisions are to play a vital role in the interpretation of constitutional law. Particularly, the US judiciary has shown the way. In the USA, the Federal Supreme Court is the ultimate arbiter in cases relating to the interpretation of the Constitution. So, Justice Holmes has said: "The provisions of the Constitution are not mathematical formulas having their essence in the form, they are organic living institutions transplanted from English soil. Their significance is vital, not formal, it is to be gathered not simply by taking the words and dictionary, but considering their origin and the line of their growth."<sup>1</sup>

The capacity for growth is inherent in a flexible Constitution like that of England. The principles of the British Constitution which is largely unwritten and embedded in customs and conventions, have no rigidity about them. Dicey gives a classic exposition of conventions. He writes that the conventional element is as large as the English Constitution. By convention what is meant is binding rule, a rule of behaviour accepted as obligatory by those concerned in the working of the Constitution.<sup>2</sup> Broadly speaking, conventions are the rules for determining the mode on which the discretionary powers of the Crown (or of Ministers as servants of the Crown) ought to be exercised.<sup>3</sup> The court can neither enforce conventions nor can it

1 *Gompers v. United States*, (1914) 233 US 604 (610)

2 A V Dicey, *Law of the Constitution*, Introduction p. CLII

3 A V Dicey, *Law of the Constitution*, pp. 422-423

give relief in the case of breach of convention. It is the weight of public opinion which decides the matter in such cases. The judiciary has nothing to do about it. The peculiar fact about England is, as Wheare observes that after 1968, the doctrine of sovereign Parliament ruled out any possibility of a Constitution which could control the legislature.<sup>1</sup> As Sir Ivor Jennings tersely puts it, "the supremacy of the Parliament is the Constitution." It is recognised a fundamental law just as a written constitution is recognised as fundamental law. Various public authorities – the Crown, the Houses of Parliament, the courts, the administrative authorities have powers and duties. Some are traditional and some are determined by common law.<sup>2</sup> It is now established that a statute enacted by Parliament has an absolute authority and has a binding force for the whole realm unless and until it is repealed by Parliament itself. The validity of British statutes cannot be questioned by courts. Parliament being supreme, no Act passed by it is subject to judicial review nor can its validity be questioned. If a mistake has been made, says Lord Hannon, "the legislature can alone correct it. The courts of law cannot sit in judgment on the legislature, but must obey and give effect to its determination."<sup>3</sup> In contrast to England, the judiciary of those democratic countries which have written Constitution can invalidate any law made by Parliament on ground of its being repugnant to the Constitution. The Supreme Court is the ultimate arbiter of cases relating to interpretation of the Constitution. There is, therefore, a clear distinction between the constitutional law and the rest of the law in such countries, but where there is no written Constitution, for example, in England, no such distinction is maintained. There is no fundamental law in England, that is to say, there is no constitutional law in the technical sense of the term.

To sum up, "Constitutional law" whether written or unwritten may be described as the fundamental principles or the basal elements which determine the State's organization and functions. In other words, the structure of the Government, division of powers, organs and methods of their function pertain to constitutional law. The primary function of constitutional law, according to Holland is to ascertain the political centre of gravity of any given State.<sup>4</sup> Constitutional Law, therefore, stands on a different footing as compared to statute law. As already stated, it is an extraordinary legislation emanating directly from the people acting in a sovereign capacity. A statute law is the creation of the representatives of the people in their capacity as legislators. Statute laws are in the nature of temporary expedients, but constitutional law is of a permanent nature.

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1 K.C. Wheare, *Modern constitutions*, pp. 14-17

2 Sir Ivor Jennings *The Law and the Constitution*, 5th Edn., p. 314

3 *R v Surrey*, (1870) LR 5 QB 87(93). See also *Croxford v Universal Insurance Co.*, (1936) 2 KB 253, 258, per Scott L.J.

4 Holland, *Jurisprudence*, 13th Edn., p. 379

### Problem of Interpretation

The problem of constitutional interpretation has little significance in England, the oldest of democracies, as no Constitution exists there in a technical sense. The English Constitution is largely unwritten and has been evolved over hundreds of years through various enactments, conventions, rules and precedents. Various rules of statutory interpretation have evolved in England during the last two centuries. Most of the rules speak of literal interpretation of the words in a statute as the safest rule. In all ordinary cases, as observed by Salmond, the courts must be content to accept the *littera legis* (*littera scripta est*) (literal interpretation of the script) is the first principle of interpretation.<sup>1</sup> Judges are not at liberty to add or to take from or modify the letter of the law, simply because they have reason to believe that the true *sententia legis* is not completely or correctly expressed by it.<sup>2</sup>

The literal interpretation of a statute is the normal rule and the Judicial Committee of the Privy Council has uniformly applied this rule in interpreting the constitutions of some of the Commonwealth countries such as Canada<sup>3</sup> or Australia.<sup>4</sup> It is obvious from various decisions of the English Courts that they are averse to going beyond the literal rule. Since our legal system in India is based on the English system and the Judges of the Indian High Courts and the Supreme Court, trained as they are in the English legal system, have been following the method adopted by the English Judges in interpreting statutes. When our Constitution came into existence, our Judges did not swerve from the trodden way the Privy Council or the English courts had shown. In *Gopalan v. State of Madras*, AIR 1950 SC 27 (the first case that came before the Supreme Court after the Constitution had come into force), the court gave a most mechanical interpretation to Arts. 21 and 22 of the Constitution. The technique of interpretation adopted by the Judges was one which is normally applied to penal or taxing statutes. Personal liberty which is the most valuable right to every citizen and which is the key theme of Art. 21 received a very narrow interpretation in *Gopalan's* case (supra). In criticizing this attitude, D.D. Basu said in his Tagore Law Lectures on the subject, namely, Limited Government and Judicial Review, thus: "Generally trained in the British legal system based mostly on common law traditions, the Indian Judges had little experience of broad perspective of constitutional law. The Constitution Act of 1935 mostly occupied their minds which had little scope for judicial review and could be interpreted like any other statute. The Privy Council's decisions which were binding on our courts till then, had not lost their grip over our judges and they could not shake off this mentality when faced with constitutional problems."<sup>5</sup>

1 Salmond, Jurisprudence, 12th Edn, pp. 132, 133

2 *Green v. Wood*, (1845) 7QB 178, per Denman, CJ

3 *AG for Canada v. AG for Ontario*, 1917 AC 326

4 *Colonial Sugar Refining Co. v. A.G.*, 1914 (AC) 237

5 D.D. Basu, Limited Government and Judicial Review, p. 355

What Mc Whinney, an American critic has said about the attitude of the English Judges towards constitutional matters apply befittingly to our Judges trained in the English system of law. Thus he says "The story is one of a cramped, fettering approach on the part of the Judges who have devoted most of their professional lives to the final determination of private law cases and are suddenly confronted for the first time with broad policy problems inherent in the adjudication of constitutional law. Their approach has been to treat the constitutions in question as ordinary statutes only, and to subject them to the same restrictive canons of construction normally applied by the common law Judges to the interpretation of statute law."<sup>1</sup>

The cardinal rule of interpretation of the Constitution as enunciated and reiterated by the Supreme Court of India was that the words should be read in their ordinary, natural and grammatical meaning. Even in *Keshavananda Bharati* case<sup>2</sup> decided in 1973, Sikri, CJ said that the well-settled principle of construction of the language of the Constitution is to preclude the import of political justice or social concepts into the language of the Constitution to be interpreted.

To speak candidly, no standard of constitutional interpretation has been set up by our Supreme Court. Different Judges have different notions, but the main trend is that of grammatical interpretation, being the safest rule. In some cases, though some Judges are found to be enthused with the oft-quoted dicta of Chief Justice Marshall of the U.S. Supreme Court that "we must not forget that it is a Constitution we are expounding - a Constitution which is to endure for ages and consequently to be adopted to the various crises of human affairs"<sup>3</sup> but, in reality, Marshallian approach to the interpretation of the Constitution was confined only to high-sounding words of some Judges.<sup>4</sup> The very cautious approach of our Judges in the matter of constitutional interpretation reminds us of the dead weight of the British legacy which our Judges have not been able to shake off. The Marshallian doctrine of constitutional interpretation, therefore, remains a matter of citation and not a matter of practical application.

In this context, it is worthwhile to remember that the U.S. Supreme Court Judges had never been hesitant to play a creative role in the

1 Mc Whinney, *Judicial Review in the English Speaking World* (1960) p. 16

2 *Keshavananda Bharati v State of Kerala* AIR 1973 SC 1461 (1982), (1973) 4 SCC 265

3 *McCulloch v Maryland*, (1819) US 4 Wheat 316 (407)

4 Krishna Iyer, J. In his usual flourish and verbal dexterity made the following observations in *Shamsber Singh v State of Punjab*, AIR 1974 SC 2192 (paras 151-153)

"In spite of the limited task assigned to the Court, our activism is - interpretation must not be bogged down by logomachy or blinkered by legalism, but be aglow with the insightful observations of Marshall, CJ, Supreme Court of the United States. Therefore, not the terminological façade of euphemism, but the underlying reality of government by the people must be our lodestar as we search for the true semantics of terms of art used in the Great Charter"

interpretation of the U.S. Constitution. In the words of Chief Justice Hughes', 'We are under a Constitution but the Constitution is what the Judges say it is'. It is an undisputed fact that the Supreme Court of the United States never confined itself to the literal interpretation of Constitutional words and phrases. If it were so, then the U.S. Constitution which was framed in the "horse-and-buggy" days<sup>1</sup> would have become quite useless for the machine age and would have found a cold burial in the National Archives and as President Jefferson advocated, a revised Constitution would have taken the place of the old one after about every twenty years'. Both the Judiciary and the Executive in the United States were aware of the sanctity and permanent nature of the Constitution and imbued with this spirit, the U.S. Judiciary started interpreting the Constitution in such a way as to uphold and maintain its spirit in spite of its language and the Executive refrained from amending the Constitution at every whiff of the wind as has been in India. Our Judiciary started interpreting the Constitution as if it were an ordinary statute and impatient with the judgments that did not suit the convenience of the Executive Government, the Constitution was subjected to unthought-of and unwarranted amending process.

The American Judges have given to the American Constitution made in the "horse-and-buggy" days a touch of dynamism of the machine age by their interpretative process. Otherwise it would have been difficult for the nation to cope with the problems arising out of the industrial and commercial revolution of which the Constitution-makers could not dream at the time of framing the Constitution. So when Chief Justice Marshall declared: 'We must never forget that this is a Constitution we are expounding', he was uttering the truth, because if the Constitution be regarded as a living and organic instrument and is intended to endure for ages to come, then it must be adapted to the various crises of human affairs"<sup>2</sup>.

What Roscoe Pound, the famous Dean of the Harvard Law School, has said in this connection appears relevant to the point. Says he in his inimitable style "The Constitution is not a glorified Police Manual; constitutional provisions lay down great principles to be applied as starting points for legal and political reasoning in the progress of society... the principles established by the Constitution are not to be interpreted and applied strictly according to the literal meaning of words used by the framers of the Constitution as if they have laid down rules. Interpretation of constitutional principles is a matter of reasoned application of rational precepts of conditions of time and place."<sup>3</sup>

It is clear, therefore, that the Constitution by its very nature does not permit of too much of literal construction being given to it. Justice Holmes of

1 *McCulloch v. Maryland*, (1819) 4 Wheat 316 (407)

2 Saying of President Roosevelt quoted by W.B. Munro in his *Government of United States*, p. 67

3 *The Writings of Thomas Jefferson*, Vol. XV, pp. 41, 42

4 *McCulloch v. Maryland*, (supra)

5 Roscoe Pound, *Law-finding through Experience and Reason* (1960), p. 63

the U S Supreme Court sounded this note of caution many times in his learned judgments Constitutional law, he says, cannot be expounded with the aid of a dictionary In ascertaining the meaning of words used in a Constitution, their origin and line of growth must be kept in view The provisions of the Constitution are not to be taken as mathematical formulas having their essence in their form Their significance is vital and not formal <sup>1</sup> On another occasion he stated that "some play must be allowed for the joints of the machine", meaning thereby that a formalistic and rigid interpretation should not be given to constitutional provisions <sup>2</sup>

On the creative role of the U S Supreme Court, an Indian jurist in one of his lectures at the Stanford University, United States, 1956, stated that the effect of amending the Constitution every now and then would have been damaging to the national life What, therefore, the nation did was to place its entire faith in the adaptability of the Constitution through judicial interpretation Formal changes to the Constitution by way of amendments have been few But the wide judicial interpretation by the Supreme Court of the broad power of the Federal Government like the commerce power, taxing, spending and war powers has largely met the needs of the growing nation <sup>3</sup>

The Supreme Court of the United States, as observed by Justice Frankfurter, has done a great deal of law-making during the first hundred years <sup>4</sup> In contrast to this, what our Supreme Court did when it was confronted with the problem of Constitutional interpretation during the first several years after our Constitution came into existence was that it started interpreting the Constitution as if it were an ordinary statute The result was ominous When the Government found that the desired reforms could not be made possible because of the obstacles put by the judiciary by its interpretation of the Constitution, it also found a way to counteract the judgments of the Supreme Court by amending the relevant provision or provisions of the Constitution To speak the truth, neither the Judiciary nor the Government had any abiding faith in the adaptability of our Constitution to various crises of human affairs Amendments after amendments have poured in only with a view to negating the Supreme Court decisions In this respect what Hidayatullah, J said in *Golaknath* case<sup>5</sup> was nothing but the truth "In our country", he says, "amendments so far have been made only with the object of negating the Supreme Court decisions In this battle royal between the Judiciary and Executive, if anything has suffered badly, it is the Constitution itself And the prestige of the Supreme Court nonetheless The Forty-second Amendment to the Constitution was the climax It may be called

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1 *Gompers v United States*, (1914) 233 US 604 (610)

2 *Missouri Kansas & Texas Rly v May*, (1904) 194 US 267 (270)

3 M Ramaswamy, *the Creative Role of the Supreme Court in the United States*, (1956), Stanford University Press, p 24

4 Justice Frankfurter, on Justice Holmes and the Constitution, 41 *Harvard Law Review*, Dec 1929, pp 121-173

5 *Golaknath v State of Punjab*, AIR 1967 SC 1643

'a partial revision of the Constitution from Preamble to the end'. It has been assailed as an attempt to deface the Constitution and cripple the Judiciary. As N.A. Palkhivala stated, the amending power does not comprise the power to alter or destroy any of the essential features, basic elements or fundamental principles of the Constitution.<sup>1</sup>

### Literal and Liberal Interpretation Contrasting and Perfecting Constitutional Interpretation – (a) Literal interpretation – Meaning and scope of the rule

The doctrine of literal interpretation as enunciated by the English Judges in the interpretation of English statutes came to be adopted by the Indian Judges. The Privy Council being the highest Tribunal of appeal its interpretation of statutes was binding upon the Indian Courts. The literal rule of interpretation has uniformly been followed by the Privy Council and this came as a legacy to the Indian Courts. The Law Lords like Lord Brougham, Lord Ellenborough, Lord Esher, M.R., Lord Denham, Lord Parker, Viscount Simon, L.C. – all advocated the doctrine of literalness, that is, literal interpretation of statutes. The gist of the rule enunciated by them is that "the rule of law upon which the construction of all statutes is based is to construe them according to the plain, literal and grammatical meaning of the words" [Att – General v. Lockwood, (1842) 9 M&W 378(398) (per Alderson, B J)]. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning [Noakes v Doncaster Collieries Ltd., (1910) 3 All ER 549 (HL) (per Viscount, Simon L.C.)] Where the literal reading of the statute produces an intelligible result, there is no ground for reading in words or challenging words according to what may be the supposed intention [R v Oakes, (1959) 2 QB 350 (per Lord Parker, C.J.)] The literal rule of interpretation is a rule of common sense as strong as can be [Doe v Joseph, (1810) 12 East 288 (292) (per Lord Ellenborough)] Even if the language used in a statute is incapable of a meaning we cannot supply one [Green v Wood, (1845) 7 QB 178 (185) (per Lord Denham, C.J.)] The true way is to take the words as the Legislature has given them and to take the meaning which the words given naturally imply. [Crawford v Spooner, (1846) 6 Moore PC 19 (per Lord Brougham)]

Our Judges have uniformly followed the English Judges in interpreting statutes and they have extended the principle of statutory construction to the interpretation of the Constitution. The great authorities in the field of interpretation of English law are Maxwell, the author of the Interpretation of Statutes and Craies, the author of Statute Law. The Indian Judges often quote from these two English authorities to support their views not only in interpreting statutes, but even when they are required to interpret the Constitution.

According to Maxwell, the first requirement of literal interpretation is that the words and phrases of technical legislation are to be used in their technical meaning if they have acquired one, otherwise in their ordinary meaning, and

1 N.A. Palkhivala, Our Constitution Defaced and Defiled (1974), p 113

secondly, the phrases and sentences are to be construed according to the rules of grammar.<sup>1</sup>

According to Craies, the language of the Acts of Parliament and more specially of modern Acts, must either be extended beyond its natural and proper limits in order to supply omissions or defects, not strained to meet justice of individual cases.<sup>2</sup>

True to the tradition of literal interpretation, our Supreme Court has declared in unequivocal terms that it is the safe rule, because the spirit of the law is an elusive and unsafe guide.<sup>3</sup> Ordinarily, it is not the function of the courts to go beyond the plain meaning and to busy themselves with the supposed intention when the meaning of the words is plain.<sup>4</sup> The court has only to ascertain the precise connotation of the expression which it possesses in law.<sup>5</sup> In *Keshav Chandra Mandal's* case<sup>6</sup> the Supreme Court held the similar view as expressed by the Privy Council in *Pakala Narayanaswami's* case.<sup>7</sup> More than once our Supreme Court has given expression to this view that the fundamental rule of construction is to find out the intention of the legislature from the words used in the statute.<sup>8</sup> If the literal construction leads to no apparent absurdity, there can be no compelling reason for departing from that golden rule of construction.<sup>9</sup> If the intention of the legislature is plain and clear, the court must not adopt any hypothetical construction on the ground that it is more consistent with the alleged object of the Act.<sup>10</sup> In coming to such conclusion, our Supreme Court must have been influenced by the famous dictum of Lord Dunedin, *viz*, "Express enactment shuts the door to further implication."<sup>11</sup>

In the interpretation of a statute, as observed by the Supreme Court, the courts always presume that the legislatures inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.<sup>12</sup> It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage if they can have appropriate application in circumstances conceivably within the contemplation of the statute.<sup>13</sup>

1. Maxwell, Interpretation of Statutes, 12th Edn, p 28

2. Craies, Statute Law, 7th Edn p 68

3. *Ranajaya Singh v. Balmath Singh*, AIR 1951 SC 749 (751)

4. *Kanailal v. Paramnidhi Sadhu Khan*, AIR 1957 SC 907 (910)

5. *State of Madras v. G. Dunkerley & Co*, AIR 1958 SC 560 (573)

6. *Commr of Agri I T v Keshav Chandra Mandal*, AIR 1958 SC 265 (270)

7. *Oajaka Baratabaswamy v Emperor*, AIR 1939 PC 47 (51, 52)

8. *Mahadeolal v. Administrator-General, W Bengal*, AIR 1960 SC 936 (939)

9. *Jugal Kishore v Raw Cotton Co*, AIR 1957 SC 376 (381), *Electric Mfg Co v D D Bhargava*, AIR 1968 SC 247 (249, 250) & *S S Light Railway v. Workers Union*, AIR 1969 SC 513 (518)

10. *Kanailal v Paramnidhi Sadhu Khan*, AIR 1957 SC 907 (910)

11. *Whitman v Sadler*, (1910) AC 514 (527)

12. *J K S & W Mills v. State of UP*, AIR 1961 SC 1170

13. *Aswini Kumar Ghosh v. Arabinda Bose*, AIR 1952 SC 369 (377) See also *Umed Singh v Raj Singh*, AIR 1975 SC 43 (63)

In *Golaknath v State of Punjab*, AIR 1967 SC 1611, Subba Rao, C.J. states at p. 1655 that the 'preamble' contains in a nutshell its ideals and aspirations. And in view of this noble preamble setting up the ideals of the governance of the country for welfare of the people, the duty of the courts should be, while interpreting constitutional provisions concerning the liberty and freedom of the people and economic justice, always to remember that they are expounding a Constitution and not an ordinary statute. The spirit of the Constitution as embodied in its 'preamble' must be maintained by the courts in their interpretation of the provisions of the Constitution.

The value of the 'preamble' in interpreting the enacted part of a statute has been explained by Lord Halsbury in *Pouell v Kensington Park Race Course Co.*, (1899) AC 143 (153) as follows:

"Two propositions are quite clear: one, that a preamble may afford usual light as to what the statute stands to reach, and another, that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

Our Supreme Court has taken its cue from Lord Halsbury's dicta. In the Reference by the President of India under Art. 143(1) AIR 1960 SC 845, the Supreme Court laid down that the value of the 'preamble' to the present Constitution is the same.

This unequivocally means that the Supreme Court does not like to give a greater importance to the 'preamble' to our Constitution than a preamble to an ordinary enactment. It is this attitude that prompted our Judges to give statutory interpretation to the Constitution from the beginning and this has created many anomalies in constitutional interpretation and prevented the Supreme Court itself from building up a series of coherent case laws arising out of constitutional cases. Sometimes, there is an attempt on the part of some Judges to come out of the shell of statutory interpretation and to approach the Constitution with a wider outlook, but often and again we find a volte face among them. The provisions of the Constitution must be interpreted against their broad perspective and not in a narrow and pedantic sense. Lord Wright in *James v Commonwealth of Australia*, (1936) AC 578 (614) has stated the following words:

"That a Constitution must not be construed in any narrow or pedantic sense."

Although broadly agreeing with this view, our Supreme Court laid the principles in Customs Act, sec. 20(2), in *re: AIR 1963 SC 1760* as follows.

"While a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, it is equally important that the well-established rules of interpretation must not be disregarded. The Constitution must be interpreted by reference to its terms and those alone, nothing is to be read into it on grounds of some supposed spirit pervading the Constitution, or on the ground of policy or even for the purpose of supplying omissions or of correcting errors."

These principles are merely a repetition of what the Supreme Court said in *Gopalan's case* (supra) over a decade earlier.

True, it is laid down in Art 367 of the Constitution that the General Clauses Act 1897 shall, subject to any adaptations and modifications as may be made therein under Art 372 apply to the interpretation of the Constitution<sup>1</sup>, it does not follow therefrom that the Court is bound strictly by the rule of grammatical interpretation. It only means that the words and phrases as defined by the General Clauses Act would equally apply to the interpretation of the Constitution. It is not an invariable rule of construction that the meaning of terms and phrases as given by the General Clauses Act shall have to be slavishly followed, if in the context, or in view of the changing needs of the time, an extended or wider meaning of the term is warranted to effectuate the purpose of the provision. To arrive at the real intention which actuated the enactment of the provision, as Story points out in commentaries on the U S Constitution, words are not to be read in vacuo, but must be considered in their historical setting and context.<sup>2</sup>

The learned members of the Drafting Committee who framed the Constitution and those learned members who passed the Constitution after close scrutiny of each word, phrase and clause and even of punctuation mark felt the need for liberal construction of the provisions of the Constitution. Thus, Alladi Krishnaswamy Aiyar voiced the feelings of the House

"It is to be borne in mind that the Constitution is an instrument under which all laws are made, and this consideration should rather impel the Court to interpret the constitutional provisions more liberally."<sup>3</sup>

But the Supreme Court stated expressly in *Gopalan's case* (supra) that it was not bound by any comments or observations made by any member of the Constituent Assembly. It was bound to interpret any provision of the Constitution according to the plain meaning of the language itself.<sup>4</sup>

The utmost the Supreme Court could do has been expressed in *Navinchand Mafatlal's case*, where it observes that the cardinal rule of interpretation of the Constitution is that the words should be read in their ordinary, natural and grammatical meaning subject to the condition that in construing words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. But still a restricted meaning is not altogether excluded if it is necessary to avoid a conflict between two exclusive jurisdictions.<sup>5</sup>

#### **LIBERAL INTERPRETATION - Its scope and application**

Lord Denning may be called the precursor of liberal interpretation in England if by liberal interpretation is meant a purposeful interpretation given

1 *Ram Kishore v Union of India*, AIR 1966 SC 644 (648)

2 Story's Commentaries on the Constitution of the U S (1883), Vol 1, p 445

3 Constituent Assembly Debates, Vol X, p 417

4 *A K. Gopalan v State of Madras*, AIR 1950 SC 27 (38)

5 *Navinchand Mafatlal v Commr of Income Tax, Bombay*, (1955) 1 SCR 829 (836, 837)

to words or phrases of a statute by looking into the spirit of the enactment "We sit here" said Denning, I J. in 1950 (as his Lordship then was) to find out the intention of Parliament and of Ministers and carry it out and we do it better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis"<sup>1</sup> This view of Denning I J. was not approved by the House of Lords in appeal from the case "If a gap is disclosed", said Lord Simonds in reply to the statement of Denning, I J., in the Court of Appeal "the remedy lies in the Amending Act"<sup>2</sup>

It is a general rule of statutory construction in England that if there is a mistake or a gap in the statute, it is not for the Judge to make it good by his interpretation but leave it to the legislature to rectify the defect by an amending Act

Between these two extremes, however,—one emphasising the literal aspect and the other emphasising the purpose aspect—it is difficult to evolve a simple compromise formula. But by and large it has gradually been recognised even in England that when any problem arises, the Judges are not to sit helpless with their hands folded, but arrive at a reasonable conclusion through interpretative process. Lord Cairns said a century ago that the primary duty of the Judge, however, is to find out the intention of the legislature through the medium of written words. But if this fails to give effect to the intention of the legislature, it is entirely left to the Judges to go beyond the written words.<sup>3</sup>

Learned Hand, J. of the U.S. Federal Court declared that statutes should be construed not as theorems of Euclid, but with imagination of purpose behind them.<sup>4</sup> In this paper "On the Spirit of Liberty" Learned Hand said: "A Judge is in a contradictory position, he is pulled by opposite forces. On the one hand, he must try as best as he can, to put into the concrete form the common will expressed by the legislature. On the other hand, he must try as best as he can to put into the concrete form what the 'will' is, not merely by slavishly following the words but also by trying honestly to say what was the underlying purpose expressed."<sup>5</sup>

The doctrine of literalness though acclaimed as the safest rule by great English authorities (as mentioned in the earlier section) does not prove to be always so. In such circumstances, the court is to look beyond the verbal expression of the law and look into the purpose and, more precisely, into the object of the law behind the written words. To use the language of Sir Carleton Allen, "the court sometimes finds itself in a peculiar position insofar as it relates to the finding out of the legislative intention through the written words which if literally interpreted would defeat the very purpose of

<sup>1</sup> *Magor & St Mellons District Council v Newport Corpn.* (1950) 2 All ER 1226 (1236), per Denning, I J.

<sup>2</sup> *Ibid.*, (1951) AC 189 (191) (HL), per Lord Simonds

<sup>3</sup> *Hill v East & West India Dock Co.*, (1884) 9 AC 488 (495) (HL)

<sup>4</sup> *Leigh Valley Coal Co v Wensavage*, 281 Fed 517 (522)

<sup>5</sup> *Papers and Addresses of Learned Hand*, Dillard Edn.

the statute<sup>1</sup> In such circumstances courts cannot sit dumb and mute, they must correct and supplement the defective *sententia legis* as well as the defective *littera legis*. Where there is a genuine and perfect intention lying behind the defective text, the courts must ascertain and give effect to the intention, which the legislature presumably would have had, if the ambiguity or omission had been called to mind. This may be regarded as the dormant or latent intention of the legislature and it is this which must be sought for as a substitute in the absence of any real or any conscious intention<sup>2</sup>

In spite of the greater emphasis on literal interpretation of statutes, the doctrine of liberal interpretation of statutes was not entirely ruled out even in England. Liberal interpretation does not, of course, mean that each and every word or phrase of a provision in a statute should be given a wide connotation. Liberal interpretation virtually means going beyond the dictionary meaning of the term if it so warrants for giving effect to the purpose of the enactment in question. *Prima facie*, the words are mere expressions of one's thought. If by the wrong use of words, it appears that the main object of the statute is likely to be crippled or changed, it is the duty of the court to give them a purposeful meaning without, of course, changing the law. Having regard to the object of the statute, departure from the strict letter is justified by the great inconvenience which would have resulted from a rigid adherence to it. "The canons of construction", says Lord Reid, "are not so rigid as to prevent a realistic solution"<sup>3</sup>

The rule as enunciated by Maxwell, a leading authority on the interpretation of statutes, is that just as the court will occasionally fill omissions, so it will sometimes – contrary to the general principle that effect must be given to every word in a statute – read a section and while doing so, ignore certain words<sup>4</sup>. Similarly, where the sense of the statute demands it, or where there has been an obvious mistake in drafting, the court will be prepared to substitute another word or phrase for that which actually appears in the text. Two instances of substitution are particularly important. They concern the conjunctions 'and' or 'or' and the verbs 'may' or 'must'<sup>5</sup>. Our Supreme Court has followed this rule of substitution in certain cases<sup>6</sup>.

Now, if the rigidity of statutory construction can be relaxed, then, no question should arise in the case of interpretation of constitutional provisions. To achieve the objectives of the Constitution which are broad-based on the will of the people who have enacted and adopted the Constitution through their representatives in the Constituent Assembly, the words and phrases in

1 Sir Carleton Allen, *Law in the Making*, 7th Edn., p. 489

2 Salmond, *Jurisprudence*, 12th Edn., 137

3 *Cramas Properties Ltd v Connaught Fur Trimmings Ltd*, (1965) 1WLR.

4 Maxwell, *Interpretation of Statutes*, 12th Edn., p. 230

5 Maxwell, *ibid*, pp. 231-232

6 *State of Bihar v S K Roy*, AIR 1966 SC 1949, *Isvar Singh & others v State of U P*, AIR 1968 SC 1450, *Paradip Port Trust v Their Workmen*, AIR 1977 SC 36 (44)

the Constitution cannot be construed too rigidly to defeat the purpose of the provision "The staff of the Constitution" as Justice Frankfurter of the U.S. Supreme Court has aptly put it, differ profoundly from ordinary law. The dominant issues of Supreme Court litigation (on constitutional law) and consequences of their adjudications are not those of the familiar law suits between John Doe and Richard Roe.<sup>1</sup>

Though expressly it is no function of the Judges to make laws in fact in the sphere of interpreting statutes and particularly the Constitution this theory has little value inasmuch as the words like 'liberty', 'property' and phrases like 'regulate commerce', 'war-power' etc. have received the widest possible judicial construction at the hands of U.S. Supreme Court Judges because literal construction would have defeated the purpose for which the Constitution stands.<sup>2</sup> For example, even prior to the First Amendment Act to the U.S. Constitution, the U.S. Supreme Court gave a meaning to the word 'liberty' to ensure freedom of speech etc. The Australian High Court too, even in the absence of a Bill of Rights in its Constitution, while interpreting defence power of the Commonwealth has spelled out what should be the real scope of freedom of speech and association.<sup>3</sup> In the same manner, the Supreme Court of Canada played a vital role in establishing certain 'natural rights' not dependent on civil law, which cannot be infringed by the legislature.<sup>4</sup>

Liberal interpretation is opposed to narrow and restricted interpretation. Constitutional law being the Supreme law of the land must not be equated with statute law which is the creation of the legislature and which must conform to constitutional law if it is to exist at all. If this is so, then how could the same principle of construction applicable to statute law be applied to constitutional law? Constitutional words and phrases should receive a broader and wider interpretation for the achievement of its social, economic and political mission.

The concept of liberal interpretation was not unknown to our Judges even at the earlier stage of constitutional interpretation. In some areas, the Supreme Court showed a tendency towards liberal construction of constitutional provisions. For example, in construing Art. 29(1) of the Constitution, the Supreme Court held that "the right to conserve the language of the citizens" includes "the right to agitate for the language". Therefore, political agitation for conservation of the language of a section of a community cannot be regarded as a corrupt practice within the meaning of sec. 123(1) of the Representation of the People Act. Unlike Art. 19(1), Art. 29(1) is not subject to any restriction.<sup>5</sup>

1 Frankfurter, On Mr Justice Holmes and the Constitution, 41 Harvard Law Review, December, 1929

2 *McCulloch v. Maryland*, (1819) 4 Wheat 316(413), *Gillow v. New York*, (1925) 268 US 652, *Herndon v. Lowry*, (1937) 301 US 242

3 *Australian Communist Party v. Commonwealth*, (1951) 83 CLR 1

4 *Saumur v. City of Quebec*, (1953) DLR 641 (670)

5 *Jagdeob Singh v. Pratap Singh*, AIR 1965 SC 183 (188)

Two other earlier decisions on the liberty of press may be cited as examples of liberal interpretation to Art 19(1) (a) of the Constitution. In *Brij Bhushan's* case, it was held by the Supreme Court that the imposition of pre-censorship on publication of the newspaper was an unreasonable restriction unless justified by clause (2) of Art 19 as violative of freedom of speech and expression. There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the freedom of speech and expression as declared by Art 19(1) (a) of the Constitution.<sup>1</sup> Freedom of speech was also given a wide interpretation in *Romesh Thappar's* case. The Supreme Court held that freedom of speech also included propagation of ideas and the freedom could be maintained only by the freedom of circulation of the paper.<sup>2</sup>

In *Sbolapur Spg And Wvg Co's* case, it was held by the majority of Judges that Art 31 which defines a right must be construed as granting a right to persons and not as impliedly giving the State a right to exercise "police power". The Article, as held by the Supreme Court must be construed liberally and not narrowly and literally.<sup>3</sup>

Again, the Supreme Court upheld the Bombay High Court's decision on the question that civil rights and liberties of a citizen were in no way to be curtailed by the order of detention to carry on his activities.<sup>4</sup>

In another case decided in 1965, the Supreme Court held that legislative exercise directed towards distributive justice cannot be considered in the light of a dated value-system though sanctified by the by-gone decisions of the Court.<sup>5</sup> The word 'control' in Art 235 of the Constitution has also received a wide construction including disciplinary control of the High Court over the subordinate courts.<sup>6</sup> A wide meaning was given to the word 'control' with reference to the words, 'posting', 'promotion', 'grant of leave', etc found in immediate connection with the word 'control' used in the Article.<sup>7</sup> Again in Art 276, the expression 'taxes on professions, trades, callings, and employments' was interpreted by the Supreme Court to include "services". It was held that a person in service was, therefore, liable to professional tax, even though he had been paying income tax.<sup>8</sup>

The Supreme Court in *Kraipak's* case<sup>9</sup> has extended the scope of "natural justice" to include administrative acts. In other words, if

1 *Brij Bhushan v State of Delhi*, AIR 1950 SC 129(133)

2 *Romesh Thappar v State of Madras*, AIR 1950 SC 124 (128)

3 *Dwarkadas Srinivas v Sbolapur Spg & Wvg Co*, AIR 1954 SC 119 (This decision evoked several amendments to the provisions. Ultimately, this Article has been deleted by the 44th Amendment Act, 1978)

4 *State of Maharashtra v Prabbakar*, AIR 1966 SC 424

5 *K Chintamani Dora v G Annamaniaidu*, AIR 1974 SC 1069 (1081)

6 *State of W Bengal v Nripendra Nath Bagchi*, AIR 1966 SC 447

7 *State of Assam v Ranga Mohammad*, AIR 1967 SC 903 (907)

8 *Rajagopalachari v Corp of Madras*, AIR 1964 SC 1172

9 *A K Kraipak v Union of India*, AIR 1970 SC 150

administrative acts are discriminatory, they can be challenged in a proceeding under Art. 226 of the Constitution.

In defining the term 'religious denomination', the Supreme Court extended the ambit of the term to include a sect or subsect of a religion. Accordingly, it has been held that the Roman Catholic Mission is a religious denomination.<sup>1</sup> Similarly, a 'monastery' as a spiritual fraternal association, too, can legitimately come within the purview of Art. 26 of the Constitution.<sup>2</sup>

In interpreting Art. 16 of the Constitution, the Supreme Court gave a new dimension to the word 'appointment' in that Article. In the case of Rangachari, the term 'appointment' was held to include 'provision for selection posts'.<sup>3</sup> In later cases, the expression 'matters relating to employment or appointment' was interpreted in its widest amplitude to cover selection of matters in relation to employment or appointment, which are in the nature of employment, such as salary, increment, leave, gratuity, pension and superannuation, promotion and even termination of employment.<sup>4</sup> The term 'appointment' has also been interpreted to comprehend 'employment or retirement'.<sup>5</sup> In interpreting Art. 16(1) of the Constitution, a quite liberal interpretation to this provision has been given by the Supreme Court per Chinnappa Reddy, J. who went the length of saying that Art. 16(1) was not in the nature of exception (as held in earlier cases), but a facet of Art. 16(1) of the Constitution.<sup>6</sup>

Another liberal interpretation has been given by the Supreme Court to the equality clauses of the Constitution in a case decided in 1982, where the Supreme Court while interpreting Arts. 14 and 16 in the light of the Preamble and Art. 39(d) held that "equal pay for equal work" could be deduced from these Articles though specifically it was not provided in those Articles, and this may be applied to cases of unequal scales of pay based on no classification or on irrational classification though those drawing the different scales of pay do identical work under the same employer."

In another field, i.e., in interpreting social welfare legislation the Supreme Court showed maximum possible liberalism. In *State of Mysore v. Workers of Gold Mines*, Gajendragadkar, J. (as he then was) observed that social and economic justice have been given a place of pride in our Constitution. By quoting Arts. 38 and 43 of the Constitution his Lordship then remarked that the concept of social and economic justice is a living concept of revolutionary import which gives substance to the rule of law and meaning and significance to the welfare State.<sup>7</sup> In a later case the Supreme Court

1 *State of Kerala v. Rev. Mother Provincial*, AIR 1970 SC 2079.

2 *Commr., H R E. v. Lakshmindra Tirtha Swamiji*, AIR 1954 SC 282.

3 *Genl. Manager, Southern Railway v. Rangachari*, AIR 1962 SC 36 (40, 41).

4 *Manager Govt Branch Press v. D B Bellappa*, AIR 1979 SC 429 (433).

5 *State of Tamil Nadu v. M N Suderajan*, AIR 1980 SC 2081 (2086).

6 *Akhi Bharatiya Soshit Karamchari Sangh v. Union of India*, AIR 1981 SC 298 (322, 326).

7 *Randhir Singh v. Union of India*, AIR 1982 SC 789 (881, 882).

8 *State of Mysore v. Workers of Gold Mines*, AIR 1958 SC 923.

reiterated the earlier view stating that the concept of social justice is not narrow, one sided or pedantic or confined to industrial adjudication alone,<sup>1</sup> but its sweep is comprehensive and within the broad sweep of these terms "justice and equality", and this court has, therefore, to consider the jural relations existing between the worker and the employer, the landlord and the tenant, the producer and the consumer and between the members of the society connected by fiduciary relations <sup>2</sup>

This indeed is a tall promise, but this remains to be translated into action

In recent years, no doubt, there is a marked tendency among the judges to ensure social and economic justice to the weaker sections of the community. The Directive Principles which were totally ignored earlier in view of the fact that they are not justiciable, are now looked into and considered for interpreting statutes as well as other provisions of the Constitution as and when necessary. The Directive Principles have now become a source of inspiration to our Judges. Of course, all our Judges in the Supreme Court are not equally inspired by the same ideal. We find two trends still at work at the Supreme Court. One, adherence to traditional method of legalistic approach to the constitutional problems and the other is the tendency to break away from the tradition. The result is that we have many conflicting decisions and dissenting judgements.

### PROGRESSIVE INTERPRETATION

It is an admitted fact that a Constitution is not to be interpreted just like an ordinary statute. Being the organic law, it must be interpreted in its broader perspective. If the Constitution is to guide the destiny of the people, it must be adapted to the changing needs of time through the process of construction and not by the amending process as and when the ruling party wants to do so. The U.S. Supreme Court showed the way as to how the Constitution could be adapted to various crises of human affairs. In dealing with the words of a constituent act like the Constitution of the United States, as observed by Justice Holmes, it must be realised that they (Constitution-makers) have called into life being, the development of which could not have been foreseen, so the case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago <sup>3</sup>

Thus emerged the concept of what may be termed as "progressive interpretation". Chief Justice Hughes of the U.S. Supreme Court in interpreting sec. 10 of Art. 1 which provides that "the State shall not make any law impairing the obligation of contract" held that "not only are existing laws read into contracts in order to fix obligation as between the parties, but the reservation of essential attributes of sovereign power is also read into the

1 *JK Cotton Spg & Wvg Mills v Labour Appellate Tribunal*, AIR 1964 SC 737

2 *Balkrishna v Sada Devram*, AIR 1977 SC 894 (897, 898)

3 *Missouri v Holland*, (1920) 252 US 416 (433)

contracts as a postulate of that legal order. The principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decision of this Court. In short the law from which the obligation stems must be understood to include constitutional law and, moreover, a progressive constitutional law.<sup>1</sup>

It is true that the Founding Fathers of the U.S. Constitution could not envisage the crisis that would come over certain States in the distant future and so it was left to the Court to interpret the contract clause of the Constitution in the light of the economic change that came over the country in 1933. So applying the doctrine of progressive interpretation Chief Justice Hughes said

"It is no answer to say that the public need was not apprehended a century ago or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers with the conditions and outlook of their time and have placed upon them, the statement carries its own refutation."<sup>2</sup>

The rule of progressive interpretation has also been applied by the U.S. Supreme Court to other clauses of the Constitution. Thus when the Constitution was adopted, the framers of the Constitution did not surely have in mind the mode of selection as well as elimination of candidates for the Congress by the direct primary which has come into vogue by way of Party Convention. In determining, therefore, whether a provision of the Constitution applies to a new subject-matter, as held by the court, it is of little significance that it is one with which the framers of the Constitution were not familiar. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of great purposes which were intended to be achieved by the Constitution as a continuing instrument of Government.<sup>3</sup>

By applying this rule, the U.S. Supreme Court extended the dimension of the Bill of Rights, and it added several other rights by way of deduction from the main body of the Bill of Rights, such as "freedom of association", "freedom of privacy", "right of education of a child in a school of parent's choice, etc." The U.S. Supreme Court has also evolved many new ideas out of the general expressions used in the U.S. Constitution, such as the words like "liberty"

1 *Home Building and Loan Association v. Blaisdell*, (1934) 290 US 398 (435). See *Wood v. Lovett*, (1941) 313 US 362 (383) where Justice Black referred to *Blaisdell's* decision as a realistic appreciation of the fact that ours is an evolving society and the general words of the contract clause were not intended to reduce the legislative branch of the Government to helpless impotency.

2 *Home Building & Loan Association v. Blaisdell*, (supra), p. 442.

3 *United States v. Classic*, (1941) 313 US 537.

"property" and phrases like "regulate commerce", "due process of law" and "equal protection of law", etc.<sup>1</sup>

What emerges from the above discussion of the US Supreme Court cases is that the Courts are not to give traditional meaning to the words and phrases of the Constitution as they stood at the time the Constitution was framed but give a broader connotation to such words and phrases in the context of the changing needs of time. The rationale behind such concept is that when our mode of thinking, ways of life and culture change with the change of time, then why the words and phrases should not take colour from the surrounding aspects of the changing pattern of our life and thought. Words are merely the vehicles of thought. The pattern of thought is not the same everywhere in the world.

The same word carries different meanings to peoples in different parts of the world. Even different dictionaries sometimes give different meanings to the same word. If this is so, why the Judges should be debarred from reading into the word or words which seems to them most appropriate and relevant in the context of the changing pattern of life more with a view to subserve the common good for which the Constitution of a country stands. Take for example, the word 'socialist' has been introduced in the Preamble to the Indian Constitution<sup>2</sup> and this word has been incorporated in the Preamble obviously with a definite purpose. The word 'socialist' is a much misunderstood word. Different thinkers starting from Marx to the writers and thinkers of present day have understood the word in different senses. Our Supreme Court has, in a recent case, interpreted the word in the following manner:

"The principal aim of a 'socialist' State is to eliminate inequality in income and status and standards of life. The basic framework of 'socialism' is to provide a decent standard of life to the working people. This amongst others on the economic side envisaged economic equality and suitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. It is such a socialist State (a blend of Marxism and Gandhism) directs the centres of power — Legislative, Executive and Judiciary to strive to set up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march, but during this journey to the fulfilment of the goal every State action taken must be directed, and must be so interpreted, as to take the society one step towards the goal."<sup>3</sup>

Thus, in interpreting Arts 39(e) and 41 of our Constitution, the Supreme Court has kept in mind the socialistic goal, as envisaged in the Preamble, to be gradually achieved by the State through peaceful Gandhian means and not through revolutionary and violent methods as done in Russia and China. This,

1 Frankfurter, Justice Holmes and the Constitution, 41 *Harvard Law Review*, Dec., 1929, pp 121-173

2 Forty-second Amendment Act, 1976

3 *D S Nakara v Union of India*, AIR 1983 SC 130(139) (per Desai, J)

we must say, is a progressive approach towards interpretation of the relevant constitutional provisions

Human approach to life and liberty is one aspect of progressive interpretation – if we may call it – is revealed in some recent cases decided by the Supreme Court. One such case is the re-appraisal of the death sentence of a life-convict for murder committed by him as provided in sec 303 of the Penal Code. The reason, or at least one of the reasons as observed by the Supreme Court in *Mibu v State of Punjab*, AIR 1983 SC 473 (1751), seems to have been that if, even the sentence of life imprisonment was not sufficient to act as a deterrent and the convict was hardened enough to commit a murder while serving that sentence, the only punishment which he deserved was death. The severity of this judgement is in accordance with the deterrent and retributive theories of punishment which then held sway. The reformatory theory of punishment which came later in the day yet to be fully and widely accepted. In its 42nd Report (1971) the Law Commission of India has observed in para 15 17 (239), that "the primary object of making the death sentence mandatory for an offence under this section seems to be to give protection to the prison staff". If a strictly penological view was taken of the situation dealt with by sec 303, the framers of the Code would have a second thought on their decision to make the death sentence mandatory, even without the aid of constitutional constraints which operate now. The Court then held

"Judged in the light shed by *Maneka Gandhi* (AIR 1978 SC 597) and *Bachan Singh* (AIR 1980 SC 898), it is impossible to uphold sec 303, IPC as valid. Section 303 excludes judicial discretion. The scale of justice are removed from the hands of the Judge so soon as he pronounces the accused guilty of the offence. So final, so irrevocable and so irresistible is the sentence that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must necessarily be stigmatised as arbitrary and oppressive. Sec. 303 is such a law and it must go the way of all bad laws. Sec 303 must be struck down as unconstitutional" (per Chinnappa Reddy, J. concurring with the unanimous judgement of the Bench) (p 484)

In reaching this conclusion, the learned Judge observed that sec 303, IPC is anachronism. It is out of tune with the mark of times. It is out of tune with the rising tide of human consciousness. It is out of tune with the philosophy of an enlightened Constitution like ours. It particularly offends Art 21 and the new jurisprudence which has sprung around it ever since the *Bank Nationalisation* case (AIR 1970 SC 564) freed from the confines of *Gopalan* (AIR 1950 SC 27)

In an earlier case, viz, *Dilip Kumar Sharma v State of M P*, AIR 1976 SC 133 (1976) 2 SCR 289 Sakaria, J., in his concurring judgement described the section as "Draconian in severity, relentless and inexorable in operation", though at that time the Court was not concerned with the vires of sec 303, IPC. *N B Death sentence for murder is not prohibited under the Indian law as in the U S A*. In *Bachan Singh v State of Punjab* AIR 1980 SC 898 (1980)2

SCC 684, the Supreme Court while upholding the validity of the death sentence as a punishment for murder, ruled that the sentence of death can be imposed in a very exceptional class of cases – “the rarest of rare cases” The Court held in that case that the normal sentence for murder is life imprisonment, and if the death sentence is to be imposed, the Court is under a legal obligation under sec 354(3) of the Cr P C to state the special reasons for imposing that sentence See also the case of Shidagouda Ningappa Ghandavar v State of Karnataka, AIR 1981 SC 764, 1981 Cri LJ 324

By exploring a new dimension of the right to life and personal liberty, as observed by Bhagwati, J in the Bhagalpur blinded prisoners' case, “we would, at the next hearing, proceed to lay down the correct implications of the constitutional right in Art 21 in the light of the dynamic constitutional jurisprudence which we are evolving in this Court ”

This is obviously an indication towards progressive approach to the issues of the gravest constitutional importance [see *Khatir & others v State of Bihar*, AIR 1981 SC 928(930) & 1068 (1074)]

The expression “progressive interpretation” has no fixed meaning It depends upon the nature of provision contained in the Constitution or the words or phrases used therein It is more or less a kind of flexible construction of the words or phrases in a provision to meet a new situation that may arise In the language of Wynes, the doctrine of progressive interpretation may rather be called “general interpretation” meaning thereby that the new development of the same subject and new means of executing an unchanging power do arise from time to time and are capable of control and exercise by the appropriate organ to which the power has been committed In other words, while power remains the same, its extent and ambit may grow with the progress of history <sup>1</sup>

By the term ‘generic’ we usually mean characteristics of a genus or a class The word has also other meanings, such as “applied to (any) individual of a large class”, “general not specific or special” What then “generic interpretation” should mean? In order to achieve the object of “generic interpretation”, it must be applied to a genus or a class Thus, any clause meant for the benefit of the weaker community or backward section or minority communities can be given a progressive interpretation There is ample scope for it in Arts 14 and 16 of our Constitution In this light, we may say that the Supreme Court’s ruling in *Sukhdev’s* case<sup>2</sup> that the employees of statutory Corporations like Oil and Natural Gas Commission, Industrial Finance Corporation, Life Insurance Corporation or Municipal Corporation, etc are also entitled to reinstatement to service if wrongfully dismissed from service, on the ground that the statutory corporations are authorities within the meaning of Art 12 of the Constitution and their employees have a statutory status, is a step towards progressive interpretation The public corporation is a new type of economic organisation and that it, therefore,

1 Wynes, *Executive and Legislative Powers*, 3rd Edn (1962) p 32

2 *Sukhdev Singh v B S S Raghubansi*, AIR 1975 SC 1331 (paras 67, 110)

does not fit in the old legal categories. Instead of forcing it into them the latter should be adapted to the needs of changing times and conditions.

This judgement is a break-away from the old traditional legal barrier that "break of service contract can lead only to damages but not to specific performance in view of sec 14(1)(b) of the Specific Relief Act 1948".

The concept of progressive interpretation thus contemplates a new approach to a new situation through the process of interpretation. The Supreme Court of the United States laid down the principle *hinc est* thus:

"Without doing violence to the language used, a constitutional provision shall be given a fair, liberal and progressive construction so that its true object might be promoted".<sup>1</sup>

The words and phrases used by the framers of the Constitution are those which are prevalent at the time and reflect the mores of the age. For example, when the U.S. Constitution was framed, it was an era of *laissez faire*, but it has endured for more than two hundred years and passed through various vicissitudes of time, it has had to adapt itself to the changing needs of time.

In an Australian case, Lord Wright put the matter in the following words:

"It is not that the meaning of the words that changes, but the changing circumstances illustrate and illumine the full import of that meaning". In other words, it would mean that the powers and limitations created by the Constitution be made applicable to new situations and it cannot be prevented on the ground that the new situations were not contemplated by the framers of the Constitution."

## HISTORICAL AND CONTEMPORANEOUS INTERPRETATION

The two approaches to constitutional interpretation represented by two theories, *viz.*, historical interpretation and contemporaneous interpretation are, in fact, not very different.

The first is an approach to the issue with a view to explaining the matter in the light of the understanding of the provision which was prevalent at the time of its adoption whereas the second is the mode of interpretation of words in a sense they originally bore at the time when the statute was passed (Craies, *Statute Law*, (7th Edn.) pp. 79, 80).

The historical approach to the problem of interpretation is not a new thing. It is as old as the day of Lord Coke who enunciated the doctrine in the following manner:

"The interpreter must consider what was the condition of the law before the new law was passed and what was the mischief or defect to be remedied and what was the remedy which the legislature has resolved to adopt to cure the mischief or defect. The true reason and remedy of the new law being ascertained such a construction should be made as will suppress the mischief and advance the remedy, avoiding and suppressing the subtle inventions and evasions and giving life and vigour

1 *Darmouth College v Woodward*, (1819) 4 Wheat 518

2 *James v Commonwealth of Australia*, (1936) All ER 1449

to the remedy proposed. Again where a contemporaneous construction has been applied to a law that construction is generally adopted as is most likely to be in accordance with the intention of the legislature."<sup>1</sup>

Historical interpretation does not prohibit the use of historical materials including pre-legislative materials for the understanding and construction of the provision of a statute. This applies equally to the Constitution. It has been held by the leading authorities like Sir George Jessel, M.R. and Earl of Salisbury that the courts should not be oblivious of the history of the law and legislation.<sup>2</sup> Particularly, in interpreting older statutes it was held to be legitimate to look into the well-known historical facts at the time the statute was passed. In the famous Alabama Arbitration case Cockburn, C.J. referred both to the American and English Foreign Enlistment Acts of the early part of the 19th century and showed that they were not intended to prevent the sale of armed ships to belligerents but to prevent the American and British citizens from manning privateers against belligerents.<sup>3</sup>

It is now a settled rule both in the U.K. and in the U.S.A. to refer to historical facts where necessary for comprehension of the subject matter. The latest trend is the erosion of the exclusionary rule even in England itself its very stronghold.<sup>4</sup>

### CONCLUSION

What then should be the criteria of interpretation of Constitution — whether the principles of statutory construction should be applied or new principles should be evolved.

There is no doubt that a Constitution is, in fact, a statute, but with the difference that it is a Constitution act while a statute is a legislative act made through ordinary legislative process. The question, therefore, is whether this makes all the difference. As already stated, Constitution is the fundamental law of the land to which all other laws must conform. In short, constitutional law is the supreme law of the country. This being so interpretative process cannot be the same in both the areas, statutory and constitutional. A Constitution is to endure for ages to come while a statute has no permanent life: it can be revoked or repealed by another. It is enacted for a particular purpose and to meet particular situation and, therefore, the interpretative process is limited to the specific purpose for which the enactment stands. Constitution, on the other hand, is concerned with the governance of the country and the life of

1. Coke's Institutes II, p.117.

2. *Holms v. Gu.* (1877) 5 Ch. D 931(935) per Jessel, M.R. & *Read v. Bishop of Lincoln*, (1892) AC 644 per Earl of Halsbury.

3. Alabama Arbitration Case, *Moore, International Arbitrations*, Vol. I p. 495

4. See *Salomon v. Commr. of Customs & Excise*, (1967) 2 QB 116 and *Post office v. Estuary Radio Ltd.*, (1958) 2 QB 749 (Reference to Treaties); *Letang v. Cooper* (1965) 1 QB 323 (Reference to a report of the Committee); *Warner v. Metropolitan Police Commissioner* (1968) 2 WLR 1303 (Reference to Parliamentary proceedings). See also Law Commission's Report (Law Com. No. 21 (Published in 1959 which recommended *inter alia* the Reports of the Royal Commission and International Treaties).

the people at large. It is, therefore, obvious that Constitution stands quite on a different footing and accordingly the interpretative process should be such as to help fulfil the aspirations of the people as well as to evolve principles to iron out the differences or conflicts if any, arising between the different organs of the Government. It is necessary therefore, that those who are entrusted with the interpretation of the Constitution must have a wider vision and a broader perspective.

It is now admitted on all hands that Constitution should receive liberal construction. What is the criterion of liberal construction depends on the attitude of different Judges. The scope of liberal interpretation not having been authoritatively defined anywhere, it is likely that Judges would give an interpretation which they may call liberal according to their own concept of liberalisation. Thus, an Indian Judge who became the Chief Justice of the Supreme Court, while admitting the need for liberal construction of Constitution, held at the same time that the same principles would undeniably apply which are applicable in construing a statute, but the ultimate result must be determined upon the actual words and not in *vacuo* but as occurring in a single complex instrument in one part may throw light on the other.<sup>1</sup>

The above proposition unmistakably shows the limited scope of liberal construction of Constitution as conceived by some of our Judges of the Supreme Court. At best, we can say that it is a concept of liberal construction of statutes in its restricted form and not of Constitution, because a Constitution, as already told, is not an ordinary statute.

It is submitted that framers of our Constitution never intended that words or phrases used in the Constitution should be construed in their restricted sense; Constitution being a living organism, 'the words must grow with the world'.<sup>2</sup> If not so, then the Constitution would become obsolete after a few decades of its birth. The American Constitution still endures to-day even after two hundred years of its birth and to this end the contribution of the American Judiciary is far-reaching. Once President Roosevelt described the American Constitution as "a relic of the horse-and-buggy days" - when there was not much banking, commerce or inter-State trade. With the growth of industry, commerce and inter-State trade, it was necessary to give new meanings to the words used in the Constitution. The U S Supreme Court has read into the Constitution many things which were not expressly there, thereby not only giving the words of the Constitution new dimensions, but changing the meanings of the words beyond what the framers of the Constitution had ever dreamt of. Particularly, the expression "the Congress shall have power to regulate commerce" has received the widest possible meaning from the U S Supreme Court. By giving it a meaning in keeping with the new situations that have developed, the Court upheld the Congress in the extension of its commerce power to rail-roads, radio-broadcasting stations, telegraph and telephone companies, airplanes, steamships, stock-exchanges

1 *A K Gopalan v State of Madras*, AIR 1950 SC 27(99), per B K Mukherjee, J

2 See Dickerson, *The Interpretation and Application of Statutes*, p 245

and ordinary industrial concerns which carry on inter-State trade. Thus, the U S Supreme Court has given a new dimension to the Constitution by means of interpretative process.<sup>1</sup>

In order to give an effective and purposeful meaning to a provision in the Constitution, it becomes essentially necessary to look into the Drafting Committee Reports and the Reports of other Committees forming the nucleus of the Constitution. This is certainly a part of interpretative process. The record of the Constituent Assembly Debates makes it abundantly clear as to what was the purpose underlying each provision and in the final analysis of the provision in reply to the debate, Dr B R Ambedkar, Chairman of the Drafting Committee and a great jurist of the time, made an illuminating exposition of the provisions of the Constitution. Thus the Constituent Assembly Debates purport to serve a very useful purpose not only as a historical background to each and every provision but also as a guideline to interpretation. But our Supreme Court was, in the early days very reluctant in the use of Drafting Committee Reports or the record of the Constituent Assembly Debates. Kania, C J said, in *Gopalan's case* (supra) (p 38) that the report of the Drafting Committee of the Constituent Assembly in respect of the wording which was brought to the notice of the court cannot be read to control the meaning of the Article, but may be seen in case of ambiguity.<sup>2</sup> Patanjali Sastri, J expressed similar views in the same case. He went to the extent of saying that he would attach no importance to the speeches made by some of the members of the Constituent Assembly in the course of debate on Art 15 (now Art 21).<sup>3</sup>

The earlier attitude towards the use of such extrinsic aids, such as the Report of the Drafting Committee as well as Debates of the Constituent Assembly has undergone considerable change later. The Judges of the Supreme Court have now shed off this inhibition and are referring to these Debates extensively to find out the 'intention' of the framers of the Constitution underlying such provision or the sense of the words and phrases in which they have been used by them. One recent case which quotes abundantly from the Constituent Assembly Debates is an illustration in point.<sup>4</sup>

A Constitution when written does not breathe. It comes to life and begins to grow only when human elements gather together and work it. As time passes, it changes in form and content almost imperceptibly and assumes a new shape and even a new meaning. This comes of the nature and temper of those who work it. Time and circumstances do have their impact on it. Yet, it is men, more than anything else, who shape and mould the destiny of a written Constitution.

1 See Justice Frankfurter's essay on Justice Holmes and the Constitution, where he wrote that decisions under "commerce clause" whether allowing or confining State action and whether sanctioning or denying the Federal power are inevitably exercises in judgement. (The Holmes Reader, Docket Series, pp 176-177)

2 *A K Gopalan v State of Madras*, AIR 1950 SC 27 (38)

3 *Ibid*, p 78

4 *S P Gupta v Union of India*, AIR 1982 SC 149 (Paras 199, 261, 271)

As Ambedkar, the Chairman of the Drafting Committee of the Constitution of India, observed

However, good a Constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organ of state such as the Legislature, the Executive and the Judiciary. The factors on which the working of these organs of the state depend are the people and their political parties they will set up as their instruments to carry out their wishes and their policies. Who can say how people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.

What Ambedkar said in 1949 holds good for all constitutions. In the ultimate analysis, it is those who are chosen to work the Constitution who work it well or wreck it.

I hope that this volume, *Constitutions of the World*, would prove to be an excellent reference work for lawyers, legislators and students of law, political science and related subjects.

Cochin  
July, 2000

**Emeritus Professor Dr. M.V. FYLEE**



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## **CONSTITUTION OF ALBANIA**

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**{Adopted on 29 April 1991}**

### **CHAPTER I GENERAL PROVISIONS**

#### **1. Republic, Sovereignty**

Albania is a Parliamentary Republic. National sovereignty stems from the people and belongs to them

#### **2. Foundations**

(1) The Republic of Albania is a juridical and democratic State

(2) Man's dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice, and pluralism are the foundations of this State, whose duty is to observe and defend them

#### **3. Division of Powers, Representation, Rule of Law**

(1) The fundamental principle of State organization is the division of the legislative, executive, and judicial power.

(2) The people exercise their power through their representative organs and referendum as well

(3) The representative organs are elected by free, general, equal, direct, and secret ballot.

(4) State activity is exercised only by the state organs recognized by law

**4. Human Rights, Minorities**

The Republic of Albania recognizes and guarantees the fundamental human rights and freedoms, those of national minorities, admitted in the international documents

**5. Powers**

(1) The legislative power belongs to the People's Assembly of the Republic of Albania

(2) The head of the State is the President of the Republic elected by the People's Assembly

(3) The rights and duties of the President are set by this law

(4) The supreme organ of the executive power is the Council of Ministers

(5) The rights and duties of the Council of Ministers are set by this law

(6) The judicial power is exercised by courts which are independent and are guided only by law

**6. Pluralism, Political Parties**

(1) Political pluralism is one of the fundamental conditions of democracy in the Albanian State

(2) The political parties and other organizations are created and exercise their activity according to the law. They are fully separated from the State

(3) It has prohibited the activity of political parties in military units and institutions of the Ministry of Defence and the Ministry of the Interior, the Ministry for Foreign Affairs and diplomatic representations abroad, the attorney's offices, investigation offices, courts, etc. The depoliticization and depoliticization of organs is achieved by law

**7. Secular State, Religion**

(1) The Republic of Albania is a secular State

(2) The State observes the freedom of religious belief and creates conditions to exercise it

**8. International Law, Equality**

(1) The legislation of the Republic of Albania considers, recognizes, and observes the principles and norms of the international law generally accepted

(2) The strict and similar application of juridical norms is compulsory for all State organs, political parties, other organizations, employees as well as for other physical and juridical persons

(3) All the citizens are equal to the law

**9. Foreign Relations, Albanians Abroad**

(1) Concerning the relations with foreign countries, the Republic of Albania defends the national independence and interests and pursues the policy of cooperation and good neighborliness, international peace, and security

(2) The Republic of Albania takes care of the recognition and observation of the national and democratic rights of the Albanians residing outside the State borders of the Republic.

#### 10. Economy

(1) The country's economy is based on the diversity of ownership, free initiative of all economic subjects, and the regulatory role of the State

(2) Economic initiative of juridical and physical persons cannot develop contrary to the social interest and should not impair the security, freedom, and dignity of man

#### 11. Property

(1) The State, juridical, and physical persons have the right to ownership

(2) All kinds of ownership are equally defended by law.

(3) The assets which are objects of the State property are set by law.

#### 12. Property for Foreigners

(1) The foreign juridical and physical persons may gain the right to ownership under the conditions foreseen and guaranteed by law

(2) The foreign physical and juridical persons are guaranteed the right to carry out independent economic activity, to invest at home, to form joint ventures and their own under the circumstances set by law. They are also guaranteed the right to transfer profits

#### 13. Taxation

(1) It is compulsory for juridical and physical persons to contribute to carry the State expenditure in relation to their income

(2) No tax or levy can be established, but by law.

#### 14. Unions

The trade unions recognized by law are juridical persons and may sign collective working contracts with the public or private subjects. The way of reaching contracts is defined by law

## CHAPTER II

### THE SUPREME ORGANS OF STATE POWER

#### Part A—The People's Assembly

#### 15. Legislative Power

(1) The People's Assembly is the highest organ of State power and the only law-making organ

(2) The People's Assembly exerts sovereignty in the name of the people and State, in the forms and boundaries foreseen by this law.

## 16. Competences

The People's Assembly has the following main competences.—

1 It defines the main directions of internal and foreign policy of the State

2 It approves and changes the Constitution and the laws, decides definitely upon the reconciliation of the laws with the Constitution, and makes their interpretation

3 It approves the economic and social draft programs of the country's development and the synthetic indices, as well as the state budget.

4 It decides on the partial and general mobilization, the state of emergency, and the state of war in case of armed aggression against the Republic of Albania or when this is necessary to fulfill obligations deriving from the international treaties

5. It ratifies and denounces the treaties of political character, the treaties or agreements of military character, the treaties or agreements which have to do with the borders of the Republic of Albania, the treaties or agreements which have to do with the fundamental rights and duties of the citizens; the treaties from which derive financial obligations for the State, treaties of agreements leading to changes to the legislation, treaties and other agreements which foresee that their ratification or denunciation be done by the People's Assembly

6. It grants amnesty.

7. It decides on people's referendums

8. It elects and discharges the President of the Republic of Albania.

9 It elects, appoints, and discharges the Supreme Court, the Attorney General, and his substitutes

10. It controls the activity of the Council of Ministers and the Attorney's General office

11. It controls the activity of RTV, ATA, and other official media of public information, depending on it. The status of these organs is set by law

12. It defines the administrative-territorial structure of the country.

13 It decides on the creation or dissolution of the ministries or other organs equal to them

## 17. Election, Term

(1) The People's Assembly is made up of 250 deputies. The People's Assembly is elected for a 4 year period

(2) The People's Assembly convenes the first session no later than two months from the day it is elected.

(3) The elections to the People's Assembly are held no later than three months from the day its mandate expires

(4) In case of war or state of emergency the People's Assembly can prolong its activity beyond the fixed limit as long as the war or the state of emergency continues

**18. Presidency, Organization**

(1) The People's Assembly elects its Presidency, which is made up of the Chairman and two Deputy Chairmen

(2) The activity of the People's Assembly and its Presidency is conducted according to the regulation it has adopted

**19. Sessions**

(1) The People's Assembly convenes its sessions no less than four times a year

(2) The sessions of the People's Assembly convene on the decision of its Presidency. The Presidency convenes the session of the People's Assembly when this is also required by the President of the Republic, the Council of Ministers, or by one fourth of the deputies.

(3) The meetings of the People's Assembly start when the majority of the deputies is present

(4) The meetings of the People's Assembly are open, except in special cases when the People's Assembly decides otherwise.

**20. Commissions**

(1) The People's Assembly elects from its ranks Permanent and Temporary Commissions

(2) In its first session the People's Assembly elects a Commission to examine the mandates of the deputies. At the proposal of this Commission, the People's Assembly confirms or annuls the mandates of the deputies

(3) It is incumbent upon the Permanent Commissions to examine the draft laws and normative decrees of the President of the Republic, to follow and control the activity of the ministries and other State organs according to the respective sectors, and to forward problems to the People's Assembly or the Council of Ministers. The Temporary Commissions are created for certain questions.

**21. Duties of Deputies**

It is the duty of the deputy to the People's Assembly in his activity to serve the people and homeland conscientiously. The rights and duties of the deputy are defined by law.

**22. Immunity, Information, Indemnity**

(1) The deputy to the People's Assembly enjoys immunity

(2) The deputy cannot be prevented from accomplishing his duties and obtaining the data which are not State secret

(3) The deputy cannot be controlled, detained, arrested, or penally prosecuted without the consent of the People's Assembly. The deputy may be detained without the consent of the People's Assembly only in cases when he commits an apparent and grave crime

(4) The deputy has no legal responsibility for the Acts he makes and the stands he adopts while performing his duty as deputy or for the vote he casts

**23. Law Making Authority**

(1) The law-making initiative belongs to the President of the Republic, the Council of Ministers, to every deputy, as well as to a group of 20,000 nationals enjoying the right of voting

(2) The laws and other Acts of the People's Assembly besides the constitutional ones, are considered approved, when voted by the majority of the present deputies, but no less than one-third of deputies

(3) The laws are declared no later than 15 days following the approval and enter into force 15 days after being published in the official gazette, except for the cases when foreseen differently by the laws as well as the cases of organic laws

**Part B—The President of the Republic of Albania****24 Head of State, Representation**

The President of the Republic of Albania is the head of State and represents the whole unity of the people

**25 Election**

(1) The President of the Republic of Albania is elected by the People's Assembly having no less than two candidates for 5 years, by a secret ballot, and by a two-thirds majority of the votes of all the deputies. In case the required majority is not ensured in the first ballot, a second voting is held in which the President of the Republic is elected by the absolute majority all the deputies' votes

(2) The candidate for President is proposed to the People's Assembly by a group of no less than 30 deputies

(3) In case there are more than two candidates for the post of the President of the Republic, in the second voting the two candidates that have won the greatest number of votes in the first voting have the right to be put up. The candidate that wins the absolute majority of all the deputies' votes is considered elected

**26. Eligibility, Incompatibility**

(1) As President of the Republic may be elected every Albanian national who has reached the age of 40 and fulfills the conditions to be elected as deputy

(2) The President of the Republic, after being elected by the People's Assembly, takes the oath before it

(3) The election of the President of the Republic is conducted no later than 30 days before the mandate of the former President of the Republic expires

(4) The same person cannot be elected President of the Republic more than twice in succession

(5) In case the President is elected from among the ranks of the deputies, he gives up the mandate of the deputy

(6) The function of the President is irreconcilable with any other function, besides those foreseen by this law

## 27. Discharge

The President of the Republic is discharged or released before the expiry of his mandate only when.—

- a) He has committed the crime of betrayal to the homeland or has violated this law
- b) His health condition prevents him from performing the duties
- c) He has put up his resignation on his free will

## 28. Competences

The following are the main competences of the President of the Republic

1 He guarantees the observation of this law, other laws and rights and freedoms of citizens

2 He convenes the first session of the new legislature of the People's Assembly.

3 He fixes the date of elections to the People's Assembly and local power organs

4 He declares the laws and referendums decided upon by the People's Assembly

5 He enjoys the right, within 15 days since the approval of the law by the People's Assembly, to put it up for reexamination by the People's Assembly only once

6 He appoints the Chairman of the Council of Ministers and accepts his resignation

7 Upon the proposal of the Chairman of the Council of Ministers, between the two sessions of the People's Assembly, he appoints, discharges, or releases separate members of the government. The President of the Republic submits this decree for approval to the People's Assembly in its nearest meeting.

8 He appoints and discharges upon the proposal of the Chairman of the Council of Ministers leaders of other central institutions

9 Having the opinion of the Chairman of the Council of Ministers and the Chairman of the Presidency of the People's Assembly, he may dissolve the People's Assembly prior to the expiry of the legislature, when its composition does not allow the performance of the functions of the Assembly itself and makes impossible the country's running. On this occasion, the elections to the People's Assembly are held again no later than 45 days since the day of dissolution. The President cannot exercise this competence over the last six month period of his mandate

10 He signs international treaties, ratifies and denounces those not examined by the People's Assembly itself

11 He appoints and discharges the diplomatic representatives upon the proposal of the Chairman of the Council of Ministers

12 He accepts the credentials and letters of call of the diplomatic representatives of Foreign States

13 He endorses the requirements for granting or casting off Albanian nationality

14 He exercises the right of pardon

15 He awards decorations and honorable titles

16 He grants the right for political asylum

17 When it is impossible for the People's Assembly to convene, he declares the partial and general mobilization as well as the state of emergency. In such cases the declaration is submitted for approval to the People's Assembly within five days

18 When the convocation of the People's Assembly is impossible, he declares the state of war in case of armed aggression against the Republic of Albania

19 He issues decrees of individual character and decisions, and in urgent cases issues even decrees of normative character, which are submitted for approval to the People's Assembly in its nearest session

## **29. Enforcing Presidential Acts**

The Acts issued by the President of the Republic on the extension of competences foreseen in the items 10, 11 and 19 of Article 28, assume juridical power and are countersigned, accordingly, by the Chairman of the Council of Ministers or by the respective minister or the persons equalled with them

## **30. Vacancy**

(1) When the seat of the President of the Republic is vacant for any reason whatsoever, his competences are exercised temporarily by the Chairman of the Presidency of the People's Assembly, excluding those foreseen in the items 5, 6, 7, 9 and 19 of Article 28

(2) The election of the President of the Republic takes place no later than 15 days from the day when the seat of the President has remained vacant

## **31. Liability**

(1) The President of the Republic does not respond for the acts committed during his function, the cases of treason to the homeland or violation of this law excluded

(2) In such cases, the question of responsibility might be discussed at the People's Assembly at the request of no less than one fourth of the deputies. The respective decision is adopted by secret ballot with a majority of two thirds of the deputies

## **32. Armed Forces, Council of Defence**

(1) The President of the Republic of Albania is General Commander of the Armed Forces and Chairman of the Council of Defence

(2) The Council of Defence is created to direct, organize, and mobilize all the forces and the country's resources for the defence of the homeland

(3) The composition of the Council of Defence is assigned by the People's Assembly on the proposal of the Chairman of the Council of Defence

### CHAPTER III

## SUPREME ORGANS OF STATE ADMINISTRATION

### 33. Council of Ministers

(1) The Council of Ministers is the highest executive and legislative organ

(2) The Council of Ministers is assigned in the first session of the People's Assembly.

(3) The President of the Republic assigns the Chairman of the Council of Ministers and upon the proposal of the latter the ministers too

(4) The composition of the Government and its program are adopted by the People's Assembly with majority of votes, within 5 days from the date it is submitted

(5) In case he does not get the vote of confidence, the Chairman of the Council of Ministers immediately submits his resignation to the President of the Republic, who assigns the new Chairman of the Council of Ministers

(6) Before resuming the functions, the Chairman of the Council of Ministers and the ministers swear before the President of the Republic.

### 34. Vote of No Confidence

(1) The deputies enjoy the right to forward at any time a lack of confidence motion towards the Council of Ministers or its separate members. The lack of confidence motion should be signed by at least one tenth of the deputies and can be examined by the People's Assembly only after three days of its presentation

(2) Non-approval by the People's Assembly of a proposal forwarded by the Government does not necessarily bring about the compulsory resignation of the Government

### 35. Composition

(1) The Council of Ministers is made of: the Chairman, Vice-Chairmen, the Ministers, and other persons defined by law

(2) Any Albanian citizen residing permanently in the Republic of Albania and enjoying the right to be elected might be in the composition of the Council of Ministers

(3) The members of the Council of Ministers should not have, except for the mandate of the deputy, any other State or professional function and should not take part in leading organisms of economic and trade organizations

(4) The member of the Council of Ministers may leave his seat vacant even when he does not ensure the vote of confidence or when he resigns. The Council of Ministers is a collegial organ. Decisions are adopted when approved by the absolute majority of its members.

(5) The Ministers respond collegially for the acts of the Council of Ministers and individually for acts of their institutions.

(6) The composition, attributes, and organization of the Council of Ministers are arranged by law.

### **36. Competences**

The Council of Ministers has the following main competences —

1 Directing the activity for the realization of the domestic and foreign policy of the State

2 Issuing the decisions, ordinances, and instructions in compliance with the Constitution and laws and on their implementation. They are signed by the Chairman of the Council of Ministers and, when having a normative character, are published in the official gazette, excluding separate cases foreseen by law.

3 Guiding and controlling the activity of Ministries and other central organs of the State administration. Coordinating and monitoring the activity of local organs of administration ensuring the compulsory and similar implementation of the laws and acts of the Government.

4 Directing the activity for the fulfillment of the tasks in the field of the country's defence, conforming to the decisions of the Council of Defence.

5 Adopting measures on security, the preservation and strengthening of juridical order, and of the citizens' rights.

6 Reaching international agreements, adopting and denouncing those that are not subjected to ratification.

7 Working out economic and social programs of the country's developments and the synthetic economic indices, the State budget, pursuing and controlling their implementation, coordinating, disciplining and controlling the State finances and the monetary and credit system.

8 Making the division or unification of the administrative-territorial units.

9 Adopting measures to ensure the protection of the environment, the suitable working conditions, and the protection of the citizens' health.

### **37. Invalidation of Illegitimate Acts**

The Council of Ministers invalidates the illegitimate acts of the Ministries and other central organs of State administration.

**38. Presidency**

(1) The Chairman and the Vice-Chairmen of the Council of Ministers constitute the Presidency of the Council of Ministers.

(2) By the decision of the Council of Ministers, the Presidency may be charged to examine and solve various questions under its competences.

(3) The Chairman of the Council of Ministers represents the Council of Ministers, presides over its meetings, directs its general activity and responds for it, ensures the unity of political and administrative management of the Government, and coordinates the affairs of the Ministries and other Central institutions.

**39. Ministers, Ministerial Orders**

(1) The Ministers and other persons equalled with them, direct the Ministries and the other Central institutions in certain branches of the respective Ministries.

(2) The Ministers bear responsibility for the activity of respective ministries.

(3) The Ministers, on questions under their competences, issue orders, regulations, and instructions based on the laws and ordinances and decisions of the Council of Ministers and on their implementation. The Acts of ministers of normative character are issued in the Official Gazette, special cases foreseen by law excluded.

**40. Abrogation of Unlawful Orders**

The Ministers abrogate unlawful orders and instructions of the subordinate organs, enterprises, and institutions.

**41. Responsibility**

The members of the Council of Ministers respond penally to the violation of this law as well as of other laws related to the exercise of their function. The penal prosecution is approved by the People's Assembly.

**CHAPTER IV****FINAL PROVISIONS****42. Local Administration, Investigator**

(1) The creation, organization, and activity of the local organs of power, administration, courts, and Attorney-General are made according to certain regulations with existing legal provisions, excluding those that run contrary to this law.

(2) The Investigator's Office depends administratively on the Minister of Justice.

**43. Amendment**

(1) The drafts for amendments to this law might be forwarded by the President of the Republic of Albania, the Council of Ministers, or one-fourth of all the deputies.

(2) The adoption of amendments is done by the People's Assembly with a majority of two-thirds of all the deputies

#### **44. Constitution. Constitutional Commission**

(1) The provisions of this law operate till the adoption of the Constitution of the Republic of Albania, whose draft will be worked out by the Special Commission charged by the People's Assembly.

(2) The composition of the Commission and the schedule of the presentation of the Draft-Constitution is defined by special decision of the People's Assembly.

#### **45. Invalidation of 1976 Constitution**

The Constitution of the People's Socialist Republic of Albania, adopted on 28. Dec 1976, as well as its later amendments are invalidated.

#### **46. Entering Into Force**

This law enters into force immediately.

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## CONSTITUTION OF ARGENTINA

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{Adopted in 1853}

### **PREAMBLE**

We, the representatives of the people of the Argentine Nation, gathered in General Constituent Assembly by the will and election of the Provinces which compose it, in fulfillment of pre-existing pacts, in order to form a national union, guarantee justice, secure domestic peace, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves, to our posterity, and to all men of the world who wish to dwell on Argentine soil invoking the protection of God, source of all reason and justice, do ordain, decree, and establish this Constitution for the Argentine Nation.

### **Part I—First Part**

#### **CHAPTER I**

#### **DECLARATIONS, RIGHTS, AND GUARANTEES**

1. The Argentine Nation adopts the Federal Republican Representative form of Government, as this Constitution establishes.
2. The Federal Government supports the Roman Catholic Apostolic religion.

3. The authorities in charge of the Federal Government shall reside in the city to be declared Capital of the Republic by a special law of Congress, once settled the cession of the territory to be federalized by one or more provincial legislatures

4. The Federal Government provides for the expenditures of the Nation with the funds of the National Treasury, composed of the proceeds of export and import duties, the sale or lease of lands owned by the Nation, the revenues of the Posts, other taxes equitably and proportionally levied on the population by the National Congress, and of whatever loans and credit transactions Congress may order in case of national emergencies or for enterprises of national interest

5. Each province shall enact its own constitution under the republican, representative system, in accordance with the principles, declarations, and guarantees of the National Constitution, ensuring its administration of justice, municipal regime, and elementary education Under these conditions, the Federal Government shall guarantee each province the full exercise of its institutions

6. The Federal Government may intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasions, and at the request of their constituted authorities, it may intervene to support or reestablish them, should they have been deposed by sedition or invasion from another province

7. The public acts and judicial proceedings of one province are worthy of full faith in the others, and Congress may, by general laws, prescribe the manner in which such acts and proceedings shall be proved and the legal effects thereof

8 The citizens of each province shall be entitled to all rights, privileges, and immunities inherent in the condition of citizen in the other provinces The extradition of criminals is a reciprocal obligation among all the provinces

9. Throughout the territory of the Nation there shall be no other Customs than the national ones, in which the tariffs enacted by Congress shall be in force

10. The circulation of goods of national production or manufacture is free from duties throughout the Republic, as well as the circulation of articles and merchandise of all kinds cleared in the national Customs

11. Goods of national or foreign production or manufacture, as well as livestock of all kinds, that may pass through the territory of one province to another, shall be free from the so called transit duties, the same as the carriages, vessels or beasts in or on which they are transported, and no other duty, whatever its name may be, shall be imposed on them by reason of their passing through the territory

12. Vessels sailing from one province to another shall not be bound to enter, anchor, or pay transit duties; and no preference shall be granted in any case to any port in respect of another, by means of trading laws or regulations

13. New provinces may be admitted into the Nation, but a new province shall neither be established within the territory of another province or provinces, nor be formed from several, without the consent of the legislatures of the provinces concerned as well as that of Congress

14. All the inhabitants of the Nation are entitled to the following rights in accordance with the laws that regulate their exercise, namely to work and perform any lawful industry, to navigate and trade, to petition the authorities, to enter, remain in, travel through, and leave the Argentine territory, to publish their ideas through the press without previous censorship, to make use and dispose of their property, to associate for useful purposes, to profess freely their religion, to teach and to learn

(1) Labor in its several forms shall be protected by law, which shall ensure to workers, dignified and equitable working conditions, limited working hours, paid rest and vacations, fair remuneration, minimum vital and adjustable wage, equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration in the management, protection against arbitrary dismissal, stability of the civil servant, free and democratic labor union organizations recognized by the mere registration in a special record

(2) Trade unions are hereby guaranteed the right to enter into collective labor bargains, to resort to conciliation and arbitration, the right to strike. Union representatives shall have the guarantees necessary for carrying out their union tasks and those related to the stability of their employment

(3) The State shall grant the benefits of social security, which shall be of an integral nature and may not be waived. In particular, the laws shall establish compulsory social insurance, which shall be in charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with State participation, with no overlapping of contributions, adjustable retirements and pensions, full family protection, protection of homestead, family allowances and access to a worthy housing

15. In the Argentine Nation there are no slaves the few who still exist shall become free as from the swearing of this Constitution, and a special law shall regulate whatever compensation this declaration may give rise to. Any contract for the purchase and sale of persons is a crime for which the parties shall be liable, as well as the notary or officer authorizing it. And slaves who by any means enter the nation shall be free by the mere fact of entering the territory of the Republic

16. The Argentine Nation admits neither blood nor birth prerogatives there are neither personal privileges nor titles of nobility All its inhabitants are equal before the law, and admissible to employment without any other requirement than their ability Equality is the basis of taxation and public burdens

17. Property may not be violated, and no inhabitant of the Nation can be deprived of it except by virtue of a sentence based on law Expropriation for reasons of public interest must be authorized by law and previously compensated Only Congress levies the taxes mentioned in Section 4 No personal service can be requested except by virtue of a law or sentence based on law Every author or inventor is the exclusive owner of his work, invention, or discovery for the term granted by law The confiscation of property is hereby abolished forever from the Argentine Criminal Code No armed body may make requisitions nor demand assistance of any kind

18. No inhabitant of the Nation may be punished without previous trial based on a law enacted before the act that gives rise to the process, nor tried by special committees, nor removed from the Judges appointed by law before the act for which he is tried Nobody may be compelled to testify against himself, nor be arrested except by virtue of a written warrant issued by a competent authority The defense by trial of persons and rights may not be violated The domicile may not be violated, as well as the written correspondence and private papers, and a law shall determine in which cases and for what reasons their search and occupation shall be allowed Death penalty for political causes, any kind of tortures and whipping, are forever abolished The prisons of the Nation shall be healthy and clean, for the security and not for the punishment of the prisoners confined therein, and any measure taken with the pretext of precaution which may lead to mortify them beyond the demands of security, shall render liable the Judge who authorizes it

19. The private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of Judges No inhabitant of the Nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit

20. Foreigners enjoy within the territory of the Nation all the civil rights of citizens, they may exercise their industry, trade and profession, own real property, buy and sell it, navigate the rivers and coasts, practice freely their religion, make wills and marry under the laws They are not obliged to accept citizenship nor to pay extraordinary compulsory taxes They may obtain naturalization papers residing two uninterrupted years in the Nation, but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic

21. Every Argentine citizen is obliged to bear arms in defense of the fatherland and of this Constitution, in accordance with the laws issued by Congress and the Decrees of the National Executive Power to this effect

Citizens by naturalization are free to render or not this service for a period of ten years as from the date they obtain naturalization papers.

22. The people neither deliberate nor govern except through their representatives and authorities established by this Constitution. Any armed force or meeting of persons assuming the rights of the people and petitioning in their name, commits the crime of sedition.

23. In the event of domestic disorder or foreign attack endangering the full enforcement of this Constitution and of the authorities hereby established, the province or territory which is in a turmoil shall be declared in state of siege and the constitutional guarantees shall be suspended therein. But during such a suspension the President of the Republic shall not pronounce judgment or apply penalties on his own. In such case, his power shall be limited, with respect to persons, to their arrest or transfer from one place of the Nation to another, should they not prefer to leave the Argentine territory.

24. Congress shall promote the reform of the present legislation in all its branches, and the establishment of trial by jury.

25. The Federal Government shall foster European immigration, and may not restrict, limit or burden with any tax whatsoever, the entry into the Argentine territory of foreigners who arrive for the purpose of tilling the soil, improving industries, and introducing and teaching arts and sciences.

26. Navigation of the inland rivers of the Nation is free for all flags, only subject to the regulations issued by the national authority.

27. The Federal Government is under the obligation to strengthen its relationships of peace and trade with foreign powers, by means of treaties in accordance with the principles of public law laid down by this Constitution.

28. The principles, guarantees and rights recognized in the preceding sections shall not be modified by the laws that regulate their enforcement.

29. Congress may not vest on the National Executive Power - nor may the provincial legislatures vest on the provincial governors - extraordinary powers or the total public authority, it may not grant acts of submission or supremacy whereby the life, honor, or wealth of the Argentine people will be at the mercy of governments or any person whatsoever. Acts of this nature shall be utterly void, and shall render those who formulate them, consent to them or sign them, liable to be condemned as infamous traitors to their fatherland.

30. The Constitution may be totally or partially amended. The necessity of reform must be declared by Congress with the vote of at least two-thirds of the members, but it shall not be carried out except by an Assembly summoned to that effect.

31. This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation, and the authorities of each province are bound thereby, notwithstanding any provision to the contrary included in the provincial laws or Constitutions, except for the province of Buenos Aires, the treaties ratified after the Pact of November 11, 1859.

32. The Federal Congress shall not enact laws restricting the freedom of printing or establishing federal jurisdiction over it

33. The declarations, rights and guarantees which the Constitution enumerates shall not be construed as a denial of other rights and guarantees not enumerated, but rising from the principle of sovereignty of the people and from the republican form of Government

34. The Judges of the Federal courts cannot at the same time hold an office in the provincial courts. The Federal service, whether civil or military, shall not grant a right of residence in the province in which it is performed unless it is where the employee habitually resides, this provision being understood as pertaining to the right to choose employments in the province in which he accidentally happens to be

35. The denominations successively adopted from 1810 up to the present, namely "United Provinces of the River Plate", "Argentine Republic", "Argentine Confederation", shall henceforth be official names to be indistinctly used for the designation of the Government and territory of the provinces, the words "Argentine Nation" being used in the making and enactment of laws

## *CHAPTER II*

### **NEW RIGHTS AND GUARANTEES**

36. (1) This Constitution shall rule even when its observance is interrupted by acts of force against the institutional order and the democratic system. These acts shall be irreparably null

(2) Their authors shall be punished with the penalty foreseen in Section 29, disqualified in perpetuity from holding public offices and excluded from the benefits of pardon and commutation of sentences

(3) Those who, as a consequence of these acts, were to assume the powers foreseen for the authorities of this Constitution or for those of the provinces, shall be punished with the same penalties and shall be civil and criminally liable for their acts. The respective actions shall not be subject to prescription

(4) All citizens shall have the right to oppose resistance to those committing the acts of force stated in this section

(5) He who, procuring personal enrichment, incurs in serious fraudulent offense against the Nation shall also attempt against the democratic system, and shall be disqualified to hold public office for the term specified by law

(6) Congress shall enact a law on public ethics which shall rule the exercise of public office

37. (1) This Constitution guarantees the full exercise of political rights, in accordance with the principle of popular sovereignty and with the laws derived therefrom. Suffrage shall be universal, equal, secret and compulsory

(2) Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system

38. (1) Political parties are basic institutions of the democratic system

(2) This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance representation of minority groups, competition for those standing as candidates for elective public positions, access to public information and communication of their ideas

(3) The State contributes to the economic support of their activities and the training of their leaders.

(4) Political parties shall make public the source and destiny of their funds and assets

39. (1) Citizens shall have the right to introduce bills before the House of Deputies. Congress shall consider them within the term of twelve months

(2) Congress shall enact, with the vote of the absolute majority of all the members of each House, a regulatory law that cannot demand more than three per cent of the national voters register, which shall be consistent with an adequate territorial distribution in order to support the initiative

(3) Bills referring to constitutional reform, international treaties, taxation, budget, and criminal legislation shall not originate in popular initiatives

40. (1) At the initiative of the House of Deputies, Congress may submit a bill to popular consultation. The law calling said consultation shall not be vetoed. With the affirmative vote of the people of the Nation, the bill shall become a law and its promulgation shall be automatic

(2) Congress or the President of the Nation, according to their respective powers, shall call a non-binding popular consultation. In this case voting shall not be compulsory

(3) With the vote of the absolute majority of all the members of each House, Congress shall regulate the subjects, procedures and time of the popular consultation

41. (1) All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations, and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.

(2) The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education

(3) The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions

(4) The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden



**Part II—Authorities of the Nation****Title I—Federal Government*****Sub-title I—First Division: Legislative Power*****CHAPTER 0****GENERAL PROVISION**

44. The Legislative Power of the Nation shall be vested in a Congress composed of two Houses, one of Deputies of the Nation and the other of Senators for the provinces and for the City of Buenos Aires

**CHAPTER I****THE HOUSE OF DEPUTIES**

45. The House of Deputies shall be composed of representatives directly elected by the people of the provinces, of the City of Buenos Aires, and of the Capital City in case of its moving, which for this purpose are considered as constituencies of a single state, and by simple plurality of votes. The number of representatives shall be one for every thirty-three thousand inhabitants or fraction not under sixteen thousand five hundred inhabitants. After each census, Congress shall establish the representation in accordance with the same, being empowered to increase but not to decrease the basis indicated for each deputy.

46. The deputies for the first legislative session shall be appointed in the following proportion: for the province of Buenos Aires, twelve; for that of Córdoba, six, for that of Catamarca, three, for that of Corrientes, four, for that of Entre Ros, two, for that of Jujuy, two, for that of Mendoza, three, for that of La Rioja, two, for that of Salta, three, for that of Santiago, four, for that of San Juan, two, for that of Santa Fe, two, for that of San Luis, two, and for that of Tucumán, three.

47. For the second legislative session a general census shall be carried out and the number of deputies shall be arranged according thereto, but this census shall only be renewed every ten years.

48. In order to be a deputy it is necessary to have attained to the age of 25 years, to have been four years a fully qualified citizen, and to be a native of the province electing him or to have two years of immediate residence therein.

49. On this occasion, the legislatures of the provinces shall regulate the means to hold the direct election of the deputies of the Nation, in the future, Congress shall enact a general law.

50. Deputies shall hold office for a term of four years and may be re-elected, but the House shall be renewed by halves every two years, for this purpose those elected for the first legislative session, after meeting, shall draw lots to decide those who shall leave after the first period.

51. In case of vacancy, the Government of the province or of the Capital City shall proceed to call a legal election for a new member.

52. All bills for raising revenue and for the recruitment of troops shall exclusively originate in the House of Deputies

53. Only the House of Deputies has the power to impeach before the Senate the President, the Vice-President, the Chief of the Ministerial Cabinet, the Ministers, and the Justices of the Supreme Court, in such cases of responsibility as are brought against them for misconduct or crimes committed in the fulfillment of their duties, or for ordinary crimes, after having known about them and after the decision to bring an action had been voted by a majority of two-thirds of its members present

## CHAPTER II

### THE SENATE

54. The Senate shall be composed of three senators for each province, and three for the City of Buenos Aires, jointly and directly elected, corresponding two seats to the political party obtaining the majority of votes, and the other seat to the political party following in number of votes. Each senator shall have one vote

55. In order to be elected senator the following conditions are required to have attained to the age of 30 years, to have been six years a citizen of the Nation, to have an annual income of two thousand strong pesos or similar revenues, and to be a native of the province electing him or to have two years of immediate residence therein

56. Senators shall hold office for a term of six years and may be indefinitely re-elected, but the Senate shall be renewed by one-third of the constituencies every two years

57. The Vice-President of the Nation shall be President of the Senate, but he shall have no vote unless in case of equality of votes

58. The Senate shall appoint a President pro tempore to preside in it in case of absence of the Vice-President, or when he holds the office of President of the Nation

59. The Senate is empowered to judge in public trial those impeached by the House of Deputies, its members being on oath for the case. When the President of the Nation is impeached, the Senate shall be presided by the Chief Justice of the Supreme Court. No person shall be declared guilty without the majority of two-thirds of the members present

60. The judgment shall not extend further than to remove the accused person from office, and to disqualify him to hold any office of honor, trust, or profit in the Nation. But the party declared guilty shall, nevertheless, be subject to accusation, trial, and punishment according to law before the ordinary courts

61. In case of foreign attack, the Senate is also empowered to authorize the President of the Nation to declare in state of siege one or several places of the Republic

62. When any vacancy occurs in the Senate because of death, resignation or other cause, the government to which the vacancy belongs shall immediately call an election for a new member

### CHAPTER III

#### PROVISIONS APPLICABLE TO BOTH HOUSES

63. Both Houses shall assemble, on their own account, every year in ordinary legislative session from March 1 until November 30. The President of the Nation may convolve to extraordinary legislative session or extend the ordinary one.

64. Each House shall be the judge of the elections, rights and qualifications of its members, as regards their validity. Neither of them shall meet without the absolute majority of its members, but a smaller number may compel the absent members to attend the meetings, in the terms and under the penalties as each House may provide

65. Both Houses begin and conclude their legislative session simultaneously. Neither of them, while they sit, shall adjourn its meetings for more than three days without the consent of the other

66. Each House shall make its rules of proceedings, and with the concurrence of two-thirds may correct any one of its members for disorderly behavior in the exercise of his duties, or can remove him on account of physical or moral disability occurring after his admission, and may even expel him from the body, but a majority of one more than the half of those present shall be enough to decide on voluntary resignations from office

67. Senators and deputies, on assuming office, shall take an oath to duly perform their duties and to act in all matters in accordance with the provisions herein established

68. No member of Congress shall be accused, judicially examined, or disturbed for opinions expressed or speeches delivered by him while holding office as legislator

69. No senator or deputy shall be arrested as from the day of his election until the expiration of his term, except when flagrantly surprised committing a crime deserving capital punishment or other infamous or serious punishment, in which case a summary report of the facts shall be submitted the corresponding House

70. When a written complaint is filed before the ordinary courts against any senator or deputy, once examined if there is enough evidence in a public trial, each House may, with the concurrence of two-thirds of the votes, suspend the accused party from his office and place him under the jurisdiction of the competent court to be judged

71. Either House shall summon the Ministers of the Executive Power to receive such explanations or reports as it may deem necessary.

72. No member of Congress shall be appointed to any civil office or commission under the Executive Power, without the previous consent of the respective House, except for employments subject to promotions

power to levy taxes and power of police over these premises, insofar as they do not interfere with the achievement of those ends

31 To order the federal intervention of a province or of the City of Buenos Aires

To approve or revoke the intervention decreed by the Executive Power during its recess

32 To make all appropriate laws and rules to put into effect the aforementioned powers, and all other powers granted by this Constitution to the Government of the Argentine Nation

76. (1) The legislative powers shall not be delegated to the Executive Power save for issues concerning administration and public emergency, with a specified term for their exercise and according to the delegating conditions established by Congress

(2) The expiration of the term foreseen in the previous paragraph shall not imply the revision of the legal relationships emerging from the rules issued as a result of the powers delegated by Congress

## *CHAPTER V*

### **MAKING AND ENACTMENT OF LAWS**

77. (1) Laws shall originate in either House of Congress, through Bills introduced by their members or by the Executive Power, save for the exceptions established in this Constitution

(2) Bills modifying the electoral system and that of political parties shall be approved by the absolute majority of all the members of the Houses

78. When a Bill is passed by the House in which it originated, it is sent to the other House for its debate. Once approved by both, it is sent to the Executive Power of the Nation for its examination, and if it is also approved, it shall become a law

79. After the general approval of a Bill, each House is empowered to delegate to its committees the detailed approval of said Bill with the vote of the absolute majority of all its members. With equal number of votes, the House may revoke the powers delegated and return to the ordinary procedure. The committee approval shall require the vote of the absolute majority of all its members. Once the Bill is approved by the committee, the ordinary procedures shall be followed

80. Any Bill not returned within ten working days is to be considered approved by the Executive Power. When a Bill is partially rejected, the remaining part shall not be approved. However, non-vetoed parts may only be promulgated if they have normative autonomy and if their partial approval does not alter the spirit or the unity of the Bill approved by Congress. In this case, the procedure foreseen for decrees of necessity and urgency shall be applicable

81. No Bill wholly rejected by either House shall be reintroduced in the legislative session of the same year

No House shall totally reject a Bill originated in it and later added or amended by the revising House. If the Bill were subject to additions and amendments by the revising House, the result of the voting shall be made known in order to state if such additions or amendments were made by the absolute majority or by two-thirds of the members present. With the absolute majority of its members present, the originating House shall approve the bill with the additions or amendments made or insist on the original text unless the additions or amendments were made by the revising House with two-thirds of those members present. In such a case, the bill shall be sent to the Executive Power with the additions or amendments of the revising House, unless the originating House were to insist on the original text with the vote of two-thirds of the members present. The originating House shall not include new additions or amendments to those already made by the revising House.

82. The will of each House shall be expressly stated, the tacit or fictitious approval is excluded in all cases.

83. If a Bill is totally or partially rejected by the Executive Power, it shall return with the objections to the originating House, the latter shall reconsider it and if it is confirmed by a majority of two-thirds of the votes, it shall be sent again to the revising House. If both Houses approve it by such majority, the Bill becomes a law and is sent to the Executive Power for promulgation. In all such cases the voting in both Houses shall be by roll call, by yeas and nays, and both the names and grounds of the voters, as well as the objections of the Executive Power shall be immediately published by the press. If the Houses differ as to the objections, the Bill cannot be reintroduced in the legislative session of that year.

84. In the enactment of laws the following formula shall be used: The Senate and House of Deputies of the Argentine Nation, in Congress assembled, decree or enact as law.

## CHAPTER VI

### GENERAL AUDITING OFFICE OF THE NATION

85. (1) The Legislative Power is exclusively empowered to exercise the external control of the national civil service as regards its estates and its economic, financial and operative aspects.

(2) The revision and opinion of the Legislative Power about the performance and the general situation of the national civil service are to be based on the reports of the General Auditing Office of the Nation.

(3) This technical advisory body of Congress with functional autonomy, shall be made up as established by the law regulating its creation and operation, which shall be approved by the absolute majority of the members of each House. The chairman of the body shall be appointed under the proposal of the opposition with the largest number of legislators in Congress.

(4) It shall be in charge of the control of the legal aspects, management and auditing of all the activities of the centralized and decentralized civil

service, whatever its forms of organization may be, as well as of other powers granted by law. It must take part in the approval or rejection of the revenue and investment accounts of public funds.

## **CHAPTER VII**

### **THE OMBUDSMAN**

86. (1) The Ombudsman is an independent body created within the sphere of the National Congress operating with full autonomy without receiving instructions from any authority. The mission of the Ombudsman is the defense and protection of human rights and other rights, guarantees and interests sheltered under this Constitution and the laws, in the face of deeds, acts or omissions of the administration, as well as the control of public administrative functions.

(2) The Ombudsman has capacity to be a party in a law suit. He is appointed and removed by Congress with the vote of two-thirds of the members present of each House. He has the immunities and privileges of legislators. He shall hold office for the term of five years and may only be re-appointed on one occasion.

(3) The organization and operation of this body shall be ruled by a special law.

## ***Sub-title II—Second Division: Executive Power***

### **CHAPTER I**

#### **ITS NATURE AND DURATION**

87. The Executive Power of the Nation shall be vested in a citizen with the title of "President of the Argentine Nation."

88. In case of illness, absence from the Capital City, death, resignation, or removal of the President from office, the Executive Power shall devolve upon the Vice-President of the Nation. In case of removal, death, resignation, or inability of the President and the Vice-President of the Nation, Congress shall determine the public officer who shall exercise the Presidency until the ceasing of the grounds of inability or the election of a new President.

89. To be elected President or Vice-President of the Nation it is necessary to have been born in the Argentine territory, or to be the son of a native born citizen if born in a foreign country, and to have the other qualifications required to be elected senator.

90. The President and Vice-President shall hold their offices for the term of four years, and they may be re-elected or may succeed each other for only one consecutive term. If they have been re-elected or they have succeeded each other, they cannot be elected for either of these two positions but with the interval of one term.

91. The President of the Nation shall cease to exercise power on the same day his four-years term expires, no event that may have interrupted it shall constitute grounds for completing the term later

92. The President and Vice-President receive a remuneration paid out of the Treasury of the Nation, which shall not be altered during their term of office. During this same period they shall neither hold any other office nor receive any other emolument from the Nation or from any province whatsoever

93. On assuming office, the President and Vice-President shall take oath before the President of the Senate and before Congress assembled, respecting their religious beliefs, to "perform with loyalty and patriotism the office of President (or Vice-President) of the Nation, and to faithfully observe the Constitution of the Argentine Nation, and to cause it to be observed"

## CHAPTER II

### PROCEDURE AND TIME OF THE ELECTION OF PRESIDENT AND VICE-PRESIDENT OF THE NATION

94. The President and Vice-President of the Nation shall be directly elected by the people, by second ballot, according to this Constitution. To this end, the national territory shall be a single constituency

95. The election shall be held within the two months previous to the expiration of the term of the President in office

96. The second ballot, when appropriate, shall be held between the two voting formulas of the most voted candidates, within thirty days of the previous election

97. If in the first ballot the most voted formula obtains more than forty-five per cent of the affirmative votes validly cast, its members shall be proclaimed President and Vice-President of the Nation.

98. If in the first ballot the most voted formula obtains at least forty per cent of the affirmative votes validly cast, and there is a difference of more than ten per cent regarding all the affirmative votes validly cast for the formula following in number of votes, its members shall be proclaimed President and Vice-President of the Nation

## CHAPTER III

### POWERS OF THE EXECUTIVE BRANCH

99. The President of the Nation has the following powers-

- 1 He is the supreme head of the Nation, head of the Government and he is politically responsible for the general administration of the country
- 2 He issues the instructions and rules necessary for the enforcement of the laws of the nation, without altering their spirit with regulatory exceptions

3 He takes part in the making of laws according to the Constitution, promulgates them and has them published. The Executive Power shall in no event issue provisions of legislative nature, in which case they shall be absolutely and irreparably null and void. Only when due to exceptional circumstances the ordinary procedures foreseen by this Constitution for the enactment of laws are impossible to be followed, and when rules are not referred to criminal issues, taxation, electoral matters, or the system of political parties, he shall issue decrees on grounds of necessity and urgency, which shall be decided by a general agreement of ministers who shall countersign them together with the Chief of the Ministerial Cabinet.

Within the term of ten days, the Chief of the Ministerial Cabinet shall personally submit the decision to the consideration of the Joint Standing Committee of Congress, which shall be composed according to the proportion of the political representation of the parties in each House. Within the term of ten days, this committee shall submit its report to the plenary meeting of each House for its specific consideration and it shall be immediately discussed by both Houses. A special law enacted with the absolute majority of all the members of each House shall regulate the procedure and scope of Congress participation.

4 He appoints the Justices of the Supreme Court with the consent of the Senate by two-thirds of its members present, in a public meeting convoked to this effect. He appoints the other Judges of the lower federal courts according to a binding proposal consisting of a list of three candidates submitted by the Council of Magistracy, with the consent of the Senate in a public meeting, in which the qualifications of the candidates shall be taken into account. Once they have attained to the age of seventy five years, a new appointment, with the same consent, shall be necessary so that they may continue in office. Judges of that age or over shall be appointed for five years, and may be indefinitely re-appointed by this same procedure.

5 He may grant pardons or commute punishments for crimes subject to federal jurisdiction, after the report of the corresponding court, except in cases of impeachment by the House of Deputies.

6 He may grant pensions, retirements, leaves of absence, and widowed pensions according to the laws of the Nation.

7 He appoints and removes Ambassadors, Ministers Plenipotentiary and Commercial Attaches with the consent of the Senate, on his own account, he appoints and removes the Chief of the Ministerial Cabinet and the Ministers, the officers of his Secretariat, Consular Agents, and other employees whose appointments are not otherwise regulated by this Constitution.

8 He annually performs the opening of the legislative session of Congress, both Houses being assembled for this purpose, reporting on this occasion on the state of the Nation, on amendments promised by the Constitution, and recommending for consideration the measures he deems necessary and advisable.

9. He extends the ordinary legislative session of Congress, or convokes to an extraordinary one when some serious order or progress interest so requires it

10 He oversees the performance of the duties of the Chief of the Ministerial Cabinet as regards the collection of the revenues of the Nation, and their investment according to the law or budget of national expenditures

11 He concludes and signs treaties, concordats and other agreements required for the maintenance of good relations with international organizations and foreign powers, he receives their Ministers and admits their Consuls

12 He is Commander-in-Chief of all the Armed Forces of the Nation

13 He provides for the military posts of the Nation with the consent of the Senate, he grants posts or ranks for the higher officers of the Armed Forces; and on his own account, he has the same faculties in the battlefield

14 He has the control of the Armed Forces and is in charge of their organization and distribution, according to the needs of the Nation

15 He declares war and orders reprisals with the consent and approval of Congress.

16 In the event of foreign attack, he declares, with the consent of the Senate, one or more places of the Nation in state of siege for a limited period. In the event of domestic disorder, he only exerts this power when Congress is in recess, since this is a power pertaining to this body. The President exercises it under the limitations prescribed in section 23

17. He may request whatever information he may consider proper from the Chief of the Ministerial Cabinet and from the heads of all branches and departments of the Administration, and through them, from other employees. They are compelled to supply such information

18 He may leave the territory of the Nation with the consent of Congress. During the recess of the latter, he may only do so without permission on justified grounds of public interest

19 He is empowered to fill vacancies requiring the consent of the Senate and occurring during its recess, by means of appointments on commission expiring at the end of the next legislative session

20 He decrees the federal intervention of a province or of the City of Buenos Aires in the event of the recess of Congress, and simultaneously he must convoke the latter to consider such intervention

**CHAPTER IV****THE CHIEF OF THE MINISTERIAL CABINET AND OTHER  
MINISTERS OF THE EXECUTIVE POWER**

**100.** (1) The Chief of the Ministerial Cabinet and the other Secretary Ministers, whose number and powers shall be determined by a special law, shall be in charge of the business of the Nation and shall countersign and legalize the acts of the President with their signatures, which are essential to become effective

(2) The Chief of the Ministerial Cabinet, politically liable before the National Congress, is empowered

1 To exercise the general administration of the country

2 To perform the acts and issue the rules necessary to exercise the powers granted by this section as well as those delegated by the President of the Nation, being countersigned by the pertinent secretary minister to which the act or rule refers

3 To appoint the employees of the administration, except for those pertaining to the President

4 To exercise the functions and powers delegated to him by the President of the Nation and, in cabinet agreement, to decide about matters that the Executive Power may indicate to him or, on his own account, about those he deems it necessary due to their importance, within the scope of his jurisdiction

5 To coordinate, prepare and convoke the meetings of the ministerial cabinet, presiding at them in the absence of the President

6 To submit to Congress the bills on Ministries and National Budget, with their prior consideration in cabinet agreement and their approval by the Executive Power

7 To have the revenues of the Nation collected and to enforce the National Budget Act

8 To countersign regulatory decrees of the laws, decrees to extend the ordinary legislative session of Congress or to convoke to an extraordinary one, and the messages of the President supporting legislative initiatives

9 To attend the meetings of Congress and take part in its debates, but not to vote

10 Once the ordinary legislative session of Congress has begun, to submit together with the other ministers a detailed report on the state of the Nation regarding the business of the respective departments

11 To give such oral and written reports and explanations that either of the Houses may request from the Executive Power

12 To countersign decrees about powers delegated by Congress, which shall be under the control of the Joint Standing Committee

13 To countersign, together with the other ministers, decrees of necessity and urgency and decrees on partial promulgation of laws. Within ten days of their approval, he shall personally submit these decrees to the consideration of the Joint Standing Committee.

(3) The Chief of the Ministerial Cabinet shall not be simultaneously appointed to another ministry.

101. The Chief of the Ministerial Cabinet shall attend Congress at least once a month, alternating between each House to report on the progress of the Government, notwithstanding the provisions of section 71. He may be interpellated for the purpose of considering a vote of censure, by the vote of the absolute majority of all the members of either House, and he may be removed by the vote of the absolute majority of the members of each House.

102. Each Minister shall be responsible for the acts he legalizes, and shall be jointly responsible for those he agrees on with his colleagues.

103. Ministers shall in no case adopt resolutions on their own account, except in relation to matters concerning the economic and administrative affairs of their respective departments.

104. After the opening of the legislative session, the ministers of the Cabinet shall submit to Congress a detailed report on the state of the Nation regarding the business of their respective departments.

105. The Ministers shall be neither senators nor deputies without resigning their offices as ministers.

106. Ministers may attend the meetings of Congress and take part in its debates, but shall not vote.

107. They shall receive for their services a remuneration established by law, which shall neither be increased nor diminished in favor or to the detriment of the incumbents.

### *Sub-title III—Third Division: The Judicial Power*

#### *CHAPTER I*

#### **ITS NATURE AND DURATION**

108. The Judicial Power of the Nation shall be vested in a Supreme Court and in such lower courts as Congress may constitute in the territory of the Nation.

109. In no case the President of the Nation shall exercise judicial functions, assume jurisdiction over pending cases, or reopen those already adjudged.

110. The Justices of the Supreme Court and the Judges of the lower courts of the Nation shall hold their offices during good behavior, and shall receive for their services a remuneration to be ascertained by law and which shall not be diminished in any way while holding office.

111. To be a member of the Supreme Court it is necessary to be a lawyer of the Nation, with eight years of practice, and with the same qualifications required to be a senator.

112. On occasion of the first installation of the Supreme Court, the persons designated shall take an oath before the President of the Nation, to perform their duties, to administer justice in a proper and faithful manner, and in accordance with the provisions of the Constitution. In the future, they shall take the oath before the Chief Justice of the Court

113. The Supreme Court shall issue its own internal regulations, and appoint its subordinate employees

114. (1) The Council of Magistracy, ruled by a special law enacted by the absolute majority of all the members of each House, shall be in charge of the selection of the Judges and of the administration of the Judicial Power

(2) The Council shall be periodically constituted so as to achieve the balance among the representation of the political bodies arising from popular election, of the Judges of all instances, and of the lawyers with federal registration. It shall likewise be composed of such other scholars and scientists as indicated by law in number and form

(3) It is empowered

1 To select the candidates to the lower courts by public competition

2 To issue proposals in binding lists of three candidates for the appointment of the Judges of the lower courts

3 To be in charge of the resources and to administer the budget assigned by law to the administration of justice

4 To apply disciplinary measures to judges

5 To decide the opening of the proceedings for the removal of judges, when appropriate to order their suspension, and to make the pertinent accusation

6 To issue the rules about the judicial organization and all those necessary to ensure the independence of judges and the efficient administration of justice

115. (1) The Judges of the lower courts of the Nation shall be removed on the grounds stated in section 53, by a special jury composed of legislators, judges, and lawyers with federal registration

(2) The decision, which cannot be appealed, shall have no other effect than the removal of the accused. But the condemned party shall nevertheless be subject to accusation, trial, and punishment according to law before the ordinary courts

(3) If no decision was taken after the term of one hundred and eighty days since the opening of the proceedings for removal, said proceedings are to be filed and, in that event, the suspended Judge shall be reinstated

(4) The composition and procedure of this jury shall be stated in the special law mentioned in section 114

## CHAPTER II

### POWERS OF THE JUDICIARY

116. The Supreme Court and the lower courts of the Nation are empowered to hear and decide all cases arising under the Constitution and the laws of the Nation, with the exception made in section 75 sub-section 12, and under the treaties made with foreign nations, all cases concerning Ambassadors, Public Ministers and Foreign Consuls, cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party, actions arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, and between one province or the inhabitants thereof against a foreign State or citizen

117. In the aforementioned cases the Supreme Court shall have appellate jurisdiction, with such regulations and exceptions as Congress may prescribe, but in all matters concerning foreign Ambassadors, Ministers and Consuls, and in those in which a province shall be a party, the Court shall have original and exclusive jurisdiction

118. The trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies, shall be decided by jury once this institution is established in the Nation. The trial shall be held in the province where the crime has been committed, but when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law

119. Treason against the Nation shall only consist in rising in arms against it, or in joining its enemies, supplying them with aid and assistance. Congress shall by a special law determine the punishment for this crime, but the penalty shall not extend beyond the person of the convicted, nor shall this dishonor be transmitted to relatives of any degree.

#### *Sub-title IV—Fourth Division: The Public Ministry*

120. (1) The Public Ministry is an independent body with functional autonomy and financial autarky, with the function of promoting the participation of justice for the defense of the legal character of the general interests of society, in coordination with the other authorities of the Republic

(2) It is composed of an Attorney General of the Nation and a General Defender of the Nation, and such other members as the law may establish

(3) Its members enjoy functional immunities and intangibility of remunerations

#### **Title II—Provincial Governments**

121. The provinces reserve to themselves all the powers not delegated to the Federal Government by this Constitution, as well as those powers

expressly reserved to themselves by special pacts at the time of their incorporation

122. They determine their own local institutions and are governed by them. They elect their Governors, legislators, and other provincial officers, without intervention of the Federal Government.

123. Each province enacts its own Constitution as stated in section 5, ensuring municipal autonomy and ruling its scope and content regarding the institutional, political, administrative, economic and financial aspects

124. (1) The provinces are empowered to set up regions for the economic and social development and to establish entities for the fulfillment of their purposes, and they are also empowered, with the knowledge of Congress, to enter into international agreements provided they are consistent with the national foreign policy and do not affect the powers delegated to the Federal Government or the public credit of the Nation. The City of Buenos Aires shall have the regime which is to be established to that effect

(2) The provinces have the original dominion over the natural resources existing in their territory

125. (1) The provinces may enter into partial treaties for purposes of the administration of justice, of economic interests, and works of common benefit, with the knowledge of the Federal Congress, and may promote their industry, immigration, the construction of railways and navigable canals, the colonization of provincial-owned lands, the introduction and establishment of new industries, the imports of foreign capitals and the exploration of their rivers, by means of laws protecting these ends and with their own resources

(2) The provinces and the City of Buenos Aires may continue with their own social security entities for civil servants and professionals, and may promote economic progress, human development, creation of jobs, education, science, knowledge and culture

126. The provinces do not exercise the power delegated to the Nation. Provinces shall in no case enter into any partial treaty of political nature, enact laws dealing with commerce, inland or foreign navigation, establish provincial Customs, coin money, establish banks with power to issue money without authorization from the Federal Congress, enact civil, commercial, criminal, or mining codes after Congress had enacted them, enact special laws regarding citizenship and naturalization, bankruptcy, counterfeiting of currency or State documents, lay any duty on tonnage, supply ships of war or raise armies, except in the event of foreign invasion or in such imminent danger that shall not admit a delay, notifying immediately to the Federal Government, appoint or receive foreign agents

127. No province shall declare or make war against another province. Their claims must be submitted to the Supreme Court and settled by it. Their *de facto* hostilities are acts of civil war, considered as sedition or mutiny, which the Federal Government must suppress and punish in accordance with the law

128. The Governors of the provinces are the natural agents of the Federal Government for the enforcement of the Constitution and the laws of the Nation

129. (1) The City of Buenos Aires shall have an autonomous system of Government with power of legislation and jurisdiction, and the head of its Government shall be directly elected by the people of the City

(2) While the City of Buenos Aires is the Capital City of the Nation, a law shall guarantee the interests of the National State

(3) According to the aforementioned provisions of this section, the National Congress shall convoke the inhabitants of the City of Buenos Aires so that the representatives that are to be elected for that purpose issue the Organizing Statute of their institutions

### Part III—Temporary Provisions

#### First

(1) The Argentine Nation ratifies its legitimate and non-prescribing sovereignty over the Malvinas, Georgias del Sur and Sandwich del Sur Islands and over the corresponding maritime and insular zones as they are an integral part of the National territory

(2) The recovery of said territories and the full exercise of sovereignty, respectful of the way of life of their inhabitants and according to the principles of international law, are a permanent and unrelinquished goal of the Argentine people

#### Second Referring to section 37

Positive actions referred to in the last paragraph of section 37 shall not comprise less guarantees than those in force at the time this Constitution was approved, and their duration shall be determined by law

#### Third Referring to section 39

The law regulating the exercise of the popular initiative shall be approved within eighteen months of this enactment

#### Fourth Referring to section 54

(1) The present members of the Senate of the Nation shall hold office until the expiration of their respective terms

(2) At the time of the renewal of one-third of the Senate in nineteen ninety-five, due to the expiration of the terms of all the senators elected in nineteen eighty-six, a third senator shall be designated for the constituency of each Legislature. The group of senators for each constituency shall be composed, as far as possible, in such a way that two seats belong to that political party or electoral alliance with the largest number of members in the Legislature, and the third seat to that political party or electoral alliance following in number of members. In case of equality of votes, that political party or electoral alliance having obtained the largest number of votes in the immediately previous election of the provincial legislature shall prevail

(3) The election of senators who replace those whose terms expire in nineteen ninety-eight, as well as the election of whoever replaces any one of the present senators in case of application of section 62, shall be carried out by these same rules of election. However, the political party or electoral alliance having the largest number of members in the Legislature at the time of the election of senator shall have the right to have its candidate elected, with the sole limitation that the three senators do not belong to the same political party or electoral alliance.

(4) These rules shall also be applicable to the election of senators for the City of Buenos Aires, in nineteen ninety-five by the electoral body, and in nineteen ninety-eight by the legislative organ of the City.

(5) The election of all the senators referred to in this provision shall be carried out within a period neither shorter than sixty nor longer than ninety days as from the date the senator must take office.

(6) In all cases, the candidates for senators shall be proposed by the political parties or electoral alliances. The fulfillment of the legal and statutory requirements to be declared candidate shall be certified by the National Electoral Court and reported to the Legislature.

(7) Whenever a national senator is elected a deputy senator shall be designated, who shall take office in the cases foreseen in section 62.

(8) The senators elected due to the application of this temporary provision shall hold office until December nine, two thousand and one.

#### **Fifth Referring to section 56**

All the members of the Senate shall be elected as indicated in section 54 within the term of two months previous to December ten, two thousand and one, drawing lots, after they have all met, to decide who shall leave in the first and second biennium.

#### **Sixth Referring to section 75, sub-section 2**

(1) A system of joint participation according to section 75, sub-section 2, and the regulations of the Federal Fiscal entity, shall be stated before the end of the year 1996, the distribution of jurisdiction, services and functions in force at the time of the enactment of this amendment, shall not be modified without the approval of the interested province, nor shall the distribution of resources in force at the time of the enactment of this amendment be modified to the detriment of the provinces, and in both cases until the aforementioned system of joint participation is stated.

(2) This provision shall not affect pending administrative or judicial claims originated in differences about the distribution of jurisdiction, services, functions or resources between the Nation and the provinces.

#### **Seventh Referring to section 75, sub-section 30**

Congress shall exercise in the City of Buenos Aires, insofar as it is the Capital of the Nation, the legislative powers which it holds according to section 129.

**Eighth Referring to section 76**

The preexisting delegated legislation with no specified term for its application shall expire after this provision had been in force for five years, except for that legislation expressly ratified by the National Congress through a new law

**Ninth Referring to section 90**

The tenure of the President holding office at the time of the enactment of this reform shall be considered the first term.

**Tenth Referring to section 90**

The tenure of office of the President of the Nation who shall be inaugurated on July 8, 1995 shall expire on December 10, 1999

**Eleventh Referring to section 99, sub-section 4**

The expiration of the appointments and the limited duration foreseen in section 99, sub-section 4, shall become effective five years after the enactment of this constitutional reform.

**Twelfth Referring to section 99, sub-section 7; 100 and 101**

(1) The provisions established in section 100 and 101, Chapter IV, Second Division, Second Part of this Constitution about the Chief of the Ministerial Cabinet shall become effective on July 8, 1995.

(2) The Chief of the Ministerial Cabinet shall be appointed for the first time on July 8, 1995, until then his powers shall be exercised by the President of the Republic

**Thirteenth Referring to section 114**

Three hundred and sixty days after this reform becomes effective the Judges of the lower courts shall only be appointed according to this Constitution. Until then the previous system shall be applied

**Fourteenth Referring to section 115**

Causes pending before the House of Deputies at the time of the creation of the Council of Magistracy shall be referred to the latter for the purposes of section 114, sub-section 5. Those introduced before the Senate shall continue therein until their conclusion

**Fifteenth Referring to section 129**

(1) Until the powers arising from the new regime of autonomy of the City of Buenos Aires are to be established, Congress shall exercise exclusive legislation over its territory, in the same terms applied until the enactment of this Constitution

(2) The head of the government shall be elected during the year nineteen ninety-five

(3) The law foreseen in section 129, paragraphs second and third, shall be enacted within the term of two hundred and seventy days as from the approval of this Constitution

(4) Until the issue of the Organizing Statute, the appointment and removal of the judges of the City of Buenos Aires shall be ruled according to sections 114 and 115 of this Constitution

#### **Sixteenth**

(1) This reform shall become effective the day after its publication. The members of the Constituent Assembly, the President of the Argentine Nation, the Presidents of the Legislative Houses, and the Chief Justice of the Supreme Court shall take oath in a single act on August 24, 1994, at the Palacio San Jos', Concepcion del Uruguay, province of Entre Ros

(2) Each power of the State and of the provincial and municipal authorities shall provide the necessary measures so that their members and officers swear this Constitution

#### **Seventeenth**

(1) The final constitutional text, which has been enacted by this Constituent Assembly, replaces the text heretofore enforced

(2) Approved in the Hall of Sessions of the National Constituent Assembly, in the city of Santa Fe, on the twenty-second day of August of the year nineteen ninety-four

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## CONSTITUTION OF AUSTRALIA

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Commonwealth of Australia Constitution Act

[9th July 1900]

An Act to constitute the Commonwealth of Australia

Whereas the people of New South Wales, Victoria, South Australia, Queensland, and

Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established.

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows

1 This Act may be cited as the Commonwealth of Australia Constitution Act

2 The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom

3 It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland and

Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

4 The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

5 This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, Judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State, and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

6 "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States, and each of such parts of the Commonwealth shall be called "a State".

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

7 The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

8 After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth, but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

9 The Constitution of the Commonwealth shall be as follows

## THE CONSTITUTION

This Constitution is divided as follows:—

Chapter I - The Parliament.

Part I - General.

Part II - The Senate.

Part III - The House of Representatives.

Part IV - Both Houses of the Parliament.

Part V - Powers of the Government.

Chapter II - The Executive Government.

Chapter III - The Judicature.

Chapter IV - Finance and Trade.

Chapter V - The States.

Chapter VI - New States.

Chapter VII - Miscellaneous.

Chapter VIII - Alteration of the Constitution.

The Schedule.

### CHAPTER I

#### THE PARLIAMENT

##### Part I—General

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth, but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

5. The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs. The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session

### Part II—The Senate

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators. The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Government to the Governor-General

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives, but in the choosing of senators each elector shall vote only once

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State

The Parliament of a State may make laws for determining the times and places of elections of senators for the State

10. Until the Parliament otherwise provides, but subject to this constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State

11. The Senate may proceed to despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate

12. The Governor of any State may cause writs to be issued for elections

of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable, and the places of the senators of the first class shall become vacant at the expiration of three years, and the places of those of the second class at the expiration of six years, from the beginning of their term of service, and afterwards the places of senators shall be vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made within one year before the places are to become vacant.

For the purpose of this section the term of service of a senator shall be taken to begin on the first day of July following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of July preceding the day of his election.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term. But if the Parliament of the State is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens.

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was so chosen, he was publicly recognised by a particular political party as being an endorsed candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where

(a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant, and

(b) before taking his seat he ceases to be a member of that party (otherwise than by reason of the party having ceased to exist), he shall be deemed not to have been so chosen or appointed and the vacancy shall be again notified in accordance with section twenty-one of this Constitution.

The name of a senator chosen or appointed under this section shall be certified by the Governor of the State to the Governor-General. If the place of a senator chosen by the people of a State at the election of senators last held before the commencement of the Constitution Alteration (Senate Casual Vacancies) 1977 became vacant before that commencement and, at that commencement, no person chosen by the House or Houses of Parliament of the State, or appointed by the Governor of the State, in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, held office, this section applies as if the place of the senator chosen by the people of the State had become vacant after that commencement.

A senator holding office at the commencement of the Constitution Alteration (Senate Casual Vacancies) 1977, being a senator appointed by the Governor of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State, shall be deemed to have been appointed to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State that commenced or commences after he was appointed and further action under this section shall be taken as if the vacancy in the place of the senator chosen by the people of the State had occurred after that commencement. Subject to the next succeeding paragraph, a senator holding office at the commencement of the Constitutional Alteration (Casual Senate Vacancies) 1977 who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the Constitution Alteration (Senate Casual Vacancies) 1977, a law to alter the Constitution entitled "Constitutional Alteration (Simultaneous Elections) 1977" came into operation, a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office.

(a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight until the expiration or dissolution of the first House of Representatives to expire or be dissolved after that law came into operation, or

(b) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and eighty-one until the expiration or dissolution of the first House of Representatives to expire or be dissolved after that law came into operation, or if there is an earlier dissolution of the Senate, until that dissolution.

16. The qualification of a senator shall be the same as those of a member of the House of Representatives.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President. The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

19. A senator may by writing addressed to the President or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote, and when the votes are equal the question shall pass in the negative.

### Part III—The House of Representatives

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of senators. The number of members chosen in the several States shall be in proportion to the respective members of their people, and shall, until the Parliament otherwise provides, be determined whenever necessary, in the following manner.

(i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of senators,

(ii) the number of members to be chosen in each State shall be determined by dividing the number of people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State. But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of the race resident in that State shall not be counted

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows

New South Wales—twenty-three,

Victoria—twenty,

Queensland—eight,

South Australia—six,

Tasmania—five,

Provided that if Western Australia is an Original State, the numbers shall be as follows

New South Wales—twenty-six,

Victoria—twenty-three,

Queensland—nine,

South Australia—seven,

Western Australia—five,

Tasmania—five

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be soon dissolved by the Governor-General

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States. In the absence of other provision each State shall be one electorate

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State, but in the choosing of members each elector shall vote only once

31. Until the parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives

32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives. After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth for Governor-General in Council may issue the writ.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:

(i) he must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualifies to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he was chosen,

(ii) he must be a subject of the Queen, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

**Part IV—Both Houses of the Parliament**

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the Schedule to this Constitution

43. A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House

44. Any person who

(i) is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights and privileges of a subject or citizen of a foreign power, or

(ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer, or

(iii) is an undischarged bankrupt or insolvent, or

(iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth, or

(v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons, shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives. But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth

45. If a senator or member of the House of Representatives

(i) becomes subject to any of the disabilities mentioned in the last preceding section, or

(ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors, or

(iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State,

his place shall thereupon become vacant

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth

50. Each House of the Parliament may make rules and orders with respect to—

(i) The mode in which its powers, privileges, and immunities may be exercised and upheld,

(ii) The order and conduct of its business and proceedings either separately or jointly with the other House

#### Part V—Powers of the Parliament

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to,

(i) trade and commerce with other countries, and among the States;

(ii) taxation, but so as not to discriminate between States or parts of States,

(iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth,

(iv) borrowing money on the public credit of the Commonwealth;

(v) postal, telegraphic, telephonic, and other like services;

(vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;

(vii) lighthouses, lightships, beacons and buoys,

(viii) astronomical and meteorological observations,

- (ix) quarantine,
- (x) fisheries in Australian waters beyond territorial limits,
- (xi) census and statistics,
- (xii) currency, coinage, and legal tender,
- (xiii) banking, other than State banking, also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money,
- (xiv) insurance, other than State insurance, also State insurance extending beyond the limits of the State concerned,
- (xv) weights and measures,
- (xvi) bills of exchange and promissory notes,
- (xvii) bankruptcy and insolvency,
- (xviii) copyrights, patents of inventions and designs, and trade marks,
- (xix) naturalisation and aliens,
- (xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth,
- (xxi) marriage,
- (xxii) divorce and matrimonial causes, and in relation thereto, parental rights, and the custody and guardianship of infants,
- (xxiii) invalid and old-age pensions,
- (xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances,
- (xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States,
- (xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States,
- (xxvi) the people of any race, for whom it is deemed necessary to make special laws,
- (xxvii) immigration and emigration,
- (xxviii) the influx of criminals,
- (xxix) external affairs,
- (xxx) the relations of the Commonwealth with the islands of the Pacific,
- (xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws,
- (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth,
- (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State,

(xxxi) railway construction and extension in any State with the consent of that State;

(xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

(xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides.

(xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

(xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;

(xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to

(i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;

(ii) matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government or the Commonwealth,

(iii) other matters declared by this Constitution to be within the exclusive power of the Parliament

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications. Except as provided in this

section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect. Laws imposing taxation except laws imposing duties of customs or of excise, shall deal with one subject of taxation only, but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare,

according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure. The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

## CHAPTER II

### THE EXECUTIVE GOVERNMENT

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

65. Until the Parliament otherwise provides, the Ministers of the State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State,

an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth

Posts, telegraphs, and telephones,

Naval and military defence,

Lighthouses, lightships, beacons, and buoys,

Quarantine

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires

### *CHAPTER III*

#### **THE JUDICATURE**

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other Federal courts as the Parliament creates, and in such other courts as it invests with Federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes

72. The Justices of the High Court and of the other courts created by the Parliament

(i) shall be appointed by the Governor-General in Council,

(ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity,

(iii) shall receive such remuneration as the Parliament may fix, but the remuneration shall not be diminished during their continuance in office

The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age

The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court. Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years.

The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by the Parliament and may at any time repeal or amend such a law, but any such repeal or amendment does not affect the term of office of a Justice under an appointment made before the repeal or amendment. A Justice of the High Court or of a court created by the Parliament may resign his office by writing under his hand delivered to the Governor-General

Nothing in the provisions added to this section by the Constitution Alteration (Retirement of Judges) 1977 affects the continuance of a person in office as a Justice of a court under an appointment made before the commencement of those provisions.

A reference in this section to the appointment of a Justice of the High Court or of a court created by the Parliament shall be read as including a reference to the appointment of a person who holds office as a Justice of the High Court or of a court created by the Parliament to another office of Justice of the same court having a different status or designation

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences

(i) of any Justice or Justices exercising the original jurisdiction of the High Court,

(ii) of any other Federal court, or court exercising Federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council,

(iii) of the Inter-State Commission, but as to questions of law only and the judgment of the High Court in all such cases shall be final and conclusive

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council. Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the Question is one which ought to be determined by Her Majesty in Council

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave

Except as provided in this section, this Constitution shall not impair any right which the Queen may be please to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council The Parliament may make laws limiting the matters in which leave may be asked, but proposed laws containing any such limitations shall be reserved by the Governor-General for Her Majesty's pleasure

75. In all matters

- (i) arising under any treaty,
  - (ii) affecting consuls or other representatives of other countries,
  - (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party,
  - (iv) between States, or between residents of different States, or between a State and a resident of another State,
  - (v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth,
- the High Court shall have original jurisdiction

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter

- (i) arising under this Constitution, or involving its interpretation,
- (ii) arising under any laws made by the Parliaments,
- (iii) of Admiralty and maritime jurisdiction,
- (iv) relating to the same subject-matter claimed under the laws of different States

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws

- (i) defining the jurisdiction of any Federal court other than the High Court,
- (ii) defining the extent to which the jurisdiction of any Federal court shall be exclusive of that which belongs to or is invested in the courts of the States,
- (iii) investing any court of a State with Federal jurisdiction

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power

79. The Federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

#### CHAPTER IV FINANCE AND TRADE

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon, and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law. But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth, but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State

with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth

**85.** When any department of the public service of a State is transferred to the Commonwealth

(i) all property of the State of any kind, used exclusively in connection with the department, shall become vested in the Commonwealth, but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary,

(ii) the Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connection with the department, the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth,

(iii) the Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section, if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament,

(iv) the Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred

**86.** On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth

**87.** During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure

The balance shall, in accordance with the Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth

**88.** Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth

**89.** Until the imposition of uniform duties of custom

(i) the Commonwealth shall credit to each State the revenues collected therein by the Commonwealth,

(ii) the Commonwealth shall debit to each State

(a) the expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth,

(b) the proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth

(ii) the Commonwealth shall pay to each State month by month the balance (if any) in favour of the State

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods shall become exclusive

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, One thousand eight hundred and ninety eight, and not otherwise

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, not from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides

(i) the duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State,

(ii) subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the

first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth, and such duties shall be collected by the Commonwealth

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, two-fifth, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any

authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connection with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission

**103. The members of the Inter-State Commission**

- (i) shall be appointed by the Governor-General in Council,
- (ii) shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office

**104.** Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States

**105.** The Parliament may take over from the States their public debts, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof, and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States

**105A. (1)** The Commonwealth may make agreements with the States with respect to the public debts of the States, including

- (a) the taking over of such debts by the Commonwealth,
- (b) the management of such debts,
- (c) the paying of interest and the provision and management of sinking funds in respect of such debts,
- (d) the consolidation, renewal, conversion, and redemption of such debts,
- (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth, and
- (f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States

**(2)** The Parliament may make laws for validating any such agreement made before the commencement of this section

(3) The Parliament may make laws for the carrying out by the parties of any such agreement

(4) Any such agreement may be varied or rescinded by the parties therein

(5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State

(6) The powers conferred by this section shall not be construed as being limited in any way by the provision of section one hundred and five of this Constitution

## **CHAPTER V**

### **THE STATES**

106 The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth shall, subject to this Constitution, continue in force in the State, and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State

111. The Parliament of a State may surrender any part of the State to the Commonwealth, and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth

112. After uniform duties of customs have been imposed, a State may levy on imports, or on goods passing into or out of the State such charges as may be necessary for executing the inspection laws of the State, but the net produce of all charges so levied shall be for the use of the Commonwealth,

and any such inspection laws may be annulled by the Parliament of the Commonwealth

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth

117. A subject of the Queen, resident in any State, shall not be subject to any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State

118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceeding of every State

119. The Commonwealth shall protect every State against the invasion and, on the application of the Executive Government of the State, against domestic violence

120. Every State shall make provisions for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effects to this provision.

## CHAPTER VI

### NEW STATES

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of an accepted by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected

## **CHAPTER VII**

### **MISCELLANEOUS**

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor. The Parliament shall sit at Melbourne until it meet at the seat of Government

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen, but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function

## **CHAPTER VIII**

### **ALTERATION OF THE CONSTITUTION**

128. This Constitution shall not be altered except in the following manner

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendments to which the first-mentioned House will not agree, and if after an

interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and any other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representative, in increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law

In this section "Territory" means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives

**SCHEDULE****OATH**

I, A.B , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law SO HELP ME GOD!

**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law

(Note—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time )

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# 4

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## CONSTITUTION OF PEOPLE'S REPUBLIC OF BANGLADESH

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BISMILLAH-AR-RAHMAN-AR-RAHIM

*(In the name of Allah, the Beneficent, the Merciful)*

### PREAMBLE

We, the people of Bangladesh, having proclaimed our Independence on the 26th day of March, 1971 and through a historic war for national independence, established the independent, sovereign People's Republic of Bangladesh,

Pledging that the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in the war for national independence, shall be fundamental principles of the Constitution;

Further pledging that it shall be a fundamental aim of the State to realise through the democratic process to socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens,

Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind,

In our Constituent Assembly, this eighteenth day of Kartick, 1379 B S corresponding to the fourth day of November, 1972 A D, do hereby adopt, enact and give to ourselves this Constitution

## PART I

### THE REPUBLIC

#### 1. The Republic

Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh

#### 2. The territory of the Republic

The territory of the Republic shall comprise—

(a) The territories which immediately before the proclamation of independence on the 26th day of March, 1971 constituted East Pakistan 4[and the territories referred to as included territories in the Constitution (Third Amendment) Act, 1974, but excluding the territories referred to as excluded territories in that Act, and]

(b) such other territories as may become included in Bangladesh

#### 2A. The state religion

The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic

#### 3. The state language

The state language of the Republic is Bangla

#### 4. National anthem, flag and emblem

(1) The national anthem of the Republic is the first ten lines of "Amar Sonar Bangla"

(2) The national flag of the Republic shall consist of a circle, coloured red throughout its area, resting on a green background

(3) The national emblem of the Republic is the national flower Shapla (nymphaea-nouchali) resting on water, having on each side and ear of paddy and being surmounted by three connected leaves of jute with two stars on each side of the leaves

(4) Subject to the foregoing clauses, provisions relating to the national anthem, flag and emblem shall be made by law

#### 5. The capital

(1) The capital of the Republic is Dhaka

(2) The boundaries of the capital shall be determined by law

#### 6. Citizenship

(1) The citizenship of Bangladesh shall be determined and regulated by law

(2) The citizens of Bangladesh shall be known as Bangladeshis

#### 7. Supremacy of the Constitution

(1) All powers in the Republic belong to the people, and their exercise

on behalf of the people shall be effected only under, and by the authority of, this Constitution

(2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void

## **PART II**

### **FUNDAMENTAL PRINCIPLES OF STATE POLICY**

#### **8. Fundamental Principles**

(1) The principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them as set out in this Part, shall constitute the fundamental principles of state policy

(1A) Absolute trust and faith in the Almighty Allah shall be the basis of all actions

(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable

#### **9. Promotion of local Government institutions**

The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women

#### **10. Participation of women in national life.**

Steps shall be taken to ensure participation of women in all spheres of national life

#### **11. Democracy and human rights**

The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured

#### **12. [...]**

#### **13. Principles of ownership**

The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms—

(a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy,

(b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law, and

(c) private ownership, that is ownership by individuals within such limits as may be prescribed by law

#### **14. Emancipation of peasants and workers**

It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms and exploitation

#### **15. Provision of basic necessities**

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care,

(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work,

(c) the right to reasonable rest, recreation and leisure, and

(d) the right to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases

#### **16. Rural development and agricultural revolution**

The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of a agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas

#### **17. Free and compulsory education**

The State shall adopt effective measures for the purpose of—

(a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law,

(b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs,

(c) removing illiteracy within such time as may be determined by law

#### **18. Public health and morality**

(1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical

purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and drugs which are injurious to health

(2) The State shall adopt effective measures to prevent prostitution and gambling

#### **19. Equality of opportunity**

(1) The State shall endeavour to ensure equality of opportunity to all citizens.

(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

#### **20. Work as a right and duty**

(1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work".

(2) The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality

#### **21. Duties of citizens and of public servants**

(1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people

#### **22. Separation of Judiciary from the executive**

The State shall ensure the separation of the judiciary from the executive organs of the State

#### **23. National Culture**

The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.

#### **24. National monuments, etc.**

The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest

#### **25. Promotion of international peace, security and solidarity**

(1) The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal

affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principle shall—

(a) Strive for the renunciation of the use of force in international relations and for general and complete disarmament,

(b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice, and

(c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism

(2) The State shall endeavour to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity

### *PART III*

### **FUNDAMENTAL RIGHTS**

#### **26. Laws inconsistent with fundamental rights to be void**

(1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void

(3) Nothing in this article shall apply to any amendment of this Constitution made under article 142

#### **27. Equality before law**

All citizens are equal before law and are entitled to equal protection of law

#### **28. Discrimination on grounds of religion, etc.**

(1) The State shall not discriminate against any citizen on grounds only of religion, race caste, sex or place of birth

(2) Women shall have equal rights with men in all spheres of the State and of public life

(3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution

(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens

#### **29. Equality of opportunity in public employment**

(1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic

(2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic

(3) Nothing in this article shall prevent the State from—

(a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic,

(b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination,

(c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex

### 30. Prohibition of foreign titles, etc.

No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state

### 31. Right to protection of law

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law

### 32. Protection of right to life and personal liberty

No person shall be deprived of life or personal liberty save in accordance with law

### 33. Safeguards as to arrest and detention

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply to any person—

(a) who for the time being is an enemy alien, or

(b) who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory

Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose

(6) Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4)

### **34. Prohibition of forced labour**

(1) All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall apply to compulsory labour —

(a) by persons undergoing lawful punishment for a criminal offence, or

(b) required by any law for public purposes

### **35. Protection in respect of trial and punishment**

(1) No person shall be convicted to any offence except for violation of all law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law

(4) No person accused of any offence shall be compelled to be a witness against himself

(5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment

(6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial

### **36. Freedom of movement**

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout

Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh

### 37. Freedom of assembly

Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health

### 38. Freedom of association

Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order,

### 39. Freedom of thought and conscience, and of speech

(1) Freedom of thought and conscience is guaranteed

(2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence—

(a) the right of every citizen of freedom of speech and expression, and

(b) freedom of the press,  
are guaranteed

### 40. Freedom of profession or occupation

Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

### 41. Freedom of religion

(1) Subject to law, public order and morality—

(a) every citizen has the right to profess, practice or propagate any religion,

(b) every religious community or denomination has the right to establish, maintain and manage its religious institutions

(2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own

### 42. Rights to property

(1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law

(2) A law made under clause (1) shall provide for the acquisition, nationalisation or requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid, but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate

(3) Nothing in this article shall affect the operation of any law made before the commencement of the Proclamations (Amendment) Order, 1977 (Proclamations Order No 1 of 1977), in so far as it relates to the acquisition, nationalisation or acquisition of any property without compensation

#### **43. Protection of home and correspondence**

Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health—

(a) to be secured in his home against entry, search and seizure, and

(b) to the privacy of his correspondence and other means of communication

#### **44. Enforcement of fundamental rights**

(1) The right to move the High Court Division in accordance with clause (1) of article 102 for the enforcement of the rights conferred by this Part is guaranteed

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers

#### **45. Modification of rights in respect of disciplinary law**

Nothing in this Part shall apply to any provision of a disciplinary law relating to members of a disciplined force, being a provision limited to the purpose of ensuring the proper discharge of their duties or the maintenance of discipline in that force

#### **46. Power to provide indemnity**

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area

#### **47. Saving for certain laws**

(1) No law providing for any of the following matters shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridge, any of the rights guaranteed by this Part—

(a) the compulsory acquisition, nationalisation or requisition of any property, or the control or management thereof whether temporarily or permanently,

(b) the compulsory amalgamation of bodies carrying on commercial or other undertakings;

(c) the extinction, modification, restriction or regulation of rights of directors, managers, agents and officers of any such bodies, or of the voting rights of persons owning shares or stock (in whatever form) therein,

(d) the extinction, modification, restriction or regulation of rights of search for or win minerals or mineral oil,

(e) the carrying on by the Government or by a corporation owned, controlled or managed by the Government, of any trade, business, industry or service to the exclusion, complete or partial, or other persons, or

(f) the extinction, modification, restriction or regulation of any right to property, any right in respect of a profession, occupation, trade or business or the rights of employers or employees in any statutory public authority or in any commercial or industrial undertaking,

if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in Part II of this Constitution

(2) Notwithstanding anything contained in this Constitution the laws specified in the First Schedule (including any amendment of any such law) shall continue to have full force and effect, and no provision of any such law, nor anything done or omitted to be done under the authority of such law, shall be deemed void or unlawful on the ground of inconsistency with, or repugnance to, any provision of this Constitution

Provided that nothing in this article shall prevent amendment, modification or repeal of any such law

(3) Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to any of the provisions of this Constitution

#### 47A. In applicability of certain articles

(1) The rights guaranteed under article 31, clauses (1) and (3) of article 35 and article 44 shall not apply to any person to whom a law specified in clause (3) of article 47 applies

(2) Notwithstanding anything contained in this Constitution, no person to whom a law specified in clause (3) of article 47 applies shall have the right to move the Supreme Court for any of the remedies under this Constitution

**PART IV**  
**THE EXECUTIVE**

**CHAPTER I**  
**THE PRESIDENT**

**48. The President**

(1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with law

(2) The President shall as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law

(3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister,

Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court

(4) A person shall not be qualified for election as President if he—

(a) is less than thirty-five years of age, or

(b) is not qualified for election a member of Parliament, or

(c) has been removed from the office of President by impeachment under this Constitution

(5) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it

**49. Prerogative of mercy**

The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority

**50. Term of office of President**

(1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office

Provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office

(2) No person shall hold office as President for more than two terms, whether or not the terms are consecutive

(3) The President may resign his office by writing under his hand addressed to the Speaker

(4) The President during his term of office shall not be qualified for election as a member of Parliament, and if a member of Parliament is elected

as President he shall vacate his seat in Parliament on the day on which he enters upon his office as President

#### **51. President's immunity**

(1) Without prejudice to the provisions of article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of this office, but this clause shall not prejudice the right of any person to take proceedings against the Government

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court

#### **52. Impeachment of the President**

(1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by a majority of the total number of members of the Parliament and delivered to the speaker, setting out the particulars of the charges, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered, and the Speaker shall forthwith summon Parliament if it is not in session

(2) The Conduct of the President may be referred by Parliament to any court, tribunal or body appointed or designated by Parliament for the investigation of a charge under this article

(3) The President shall have the right to appear and to be represented during the consideration of the charge

(4) If after the consideration of the charge a resolution is passed by Parliament by votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed

(5) Where the Speaker is exercising the functions of the President under article 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker in clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in clause (4) to the vacation by the President of his office shall be construed as a reference to the vacation by the Speaker of his office as Speaker, and on the passing of a resolution such as is referred to in clause (4) the Speaker shall cease to exercise the functions of President

#### **53. Removal of President of ground of incapacity**

(1) The President may be removed from office on the ground of physical or mental incapacity on a motion of which notice, signed by a majority of the total number of members of Parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity Removal of President on ground of incapacity

(2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereinafter in this article called "the Board") and upon the necessary motion being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board

(3) The motion for removal shall not be put to the vote earlier than fourteen nor later than thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament

(4) The President shall have the right to appear and to be represented during the consideration of the motion

(5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed

(6) If before the motion for removal is made in Parliament, the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament

(7) If after consideration by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with) the motion is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the resolution is passed

#### **54. Speaker to act as President during absence, etc.**

If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause of Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his office, as the case may be

## **CHAPTER II**

### **THE PRIME MINISTER AND THE CABINET**

#### **55. The Cabinet**

(1) There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Minister as the Prime Minister may from time to time designate

(2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister.

(3) The Cabinet shall be collectively responsible to Parliament

(4) All executive actions of the Government shall be expressed to be taken in the name of the President

(5) The President shall by rules specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity or any order of instrument so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed.

(6) The President shall make rules for the allocation and transaction of the business of the Government.

#### **56. Minister**

(1) There shall be Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister

(2) The appointments of the Prime Minister and other Ministers and of the Ministers of State and Deputy Ministers, shall be made by the President.

Provided that not less than nine-tenths of their number shall be appointed from among members of Parliament and not more than one-tenth of their number may be chosen from among persons qualified for election as members of Parliament

(3) The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament

(4) If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purpose of this clause as counting to be such members

#### **57. Tenure of office of Prime Minister**

(1) The office of the Prime Minister shall be vacant—

(a) if he resigns from office at any time by placing his resignation in the hands of the President, or

(b) if he ceases to be a member of Parliament

(2) If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly

(3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered upon office

#### **58. Tenure of office of other Ministers**

(1) The office of a Minister other than the Prime Minister shall become vacant—

(a) if he resigns from office by placing his resignation in the hands of the Prime Minister for submission to the President,

(b) if he ceases to be a member of Parliament, but this shall not be applicable to a Minister chosen under the proviso to article 56(2),

(c) if the President, pursuant to the provisions of clause (2), so directs, or

(d) as provided in clause (4)

(2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister.

(3) Nothing in sub-clauses (a), (b), and (d) of clause (1) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved

(4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provisions of the Chapter, continue to hold office until his successor has entered upon office

(5) In this article "Minister" includes Minister of State and Deputy Minister

#### **58A. Application of Chapter**

Nothing in this Chapter, except the provision of article 55(4), (5) and (6), shall apply during the period in which Parliament is dissolved or stands dissolved

Provided that, notwithstanding anything contained in Chapter IIA, where the President summons Parliament that has been dissolved to meet under article 72(4), this Chapter shall apply "

### **CHAPTER IIA**

#### **NON-PARTY CARE TAKER GOVERNMENT**

##### **58B. Non-Party Care-taker Government**

(1) There shall be a Non-Party Care-taker Government during the period from the date on which the Chief Adviser of such government enters upon office after Parliament is dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters upon his office after the constitution of Parliament

(2) The Non-Party Care-taker Government shall be collectively responsible to the President

(3) The executive power of the Republic shall, during the period mentioned in clause (1), be exercised, subject to the provisions of article 58D(1), in accordance with this Constitution, by or on the authority of the Chief Adviser and shall be exercised by him in accordance with the advice of the Non-Party Care-taker Government

(4) The provisions of article 55(4), (5) and (6) shall (with the necessary adaptations) apply to similar matters during the period mentioned in clause (1)

**58C. Composition of the Non-Party Care-taker Government, appointment of Advisers, etc.**

(1) Non-Party Care-taker Government shall consist of the Chief Adviser at its head and not more than ten other Advisers, all of whom shall be appointed by the President

(2) The Chief Adviser and other Advisers shall be appointed within fifteen days after Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the Chief Adviser is appointed, the Prime Minister and his cabinet who were in office immediately before Parliament was dissolved or stood dissolved shall continue to hold office as such

(3) The President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article

Provided that if such retired Chief Justice is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice

(4) If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under this article

Provided that if such retired Judge is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge

(5) If no retired judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution

(7) The President shall appoint Advisers from among the persons who are—

- (a) qualified for election as members of parliament,
- (b) not members of any political party or of any organisation associated with or affiliated to any political party,
- (c) not, and have agreed in writing not to be, candidates for the ensuing election of members of parliament,

(d) not over seventy-two years of age

(8) The Advisers shall be appointed by the President on the advice of the Chief Adviser

(9) The Chief Adviser or an Adviser may resign his office by writing under his hand addressed to the President

(10) The Chief Adviser or an Adviser shall cease to be Chief Adviser or Adviser if he is disqualified to be appointed as such under this article.

(11) The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister and an Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Minister

(12) The Non-Party Care-taker Government shall stand dissolved on the date on which the Prime Minister enters upon his office after the constitution of new Parliament

#### **58D. Functions of Non-Party Care-taker Government**

(1) The Non-Party Care-taker Government shall discharge its functions as an interim Government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic, and, except in the case of necessity for the discharge of such functions it shall not make any policy decision

(2) The Non-Party Care-taker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially

#### **58E. Certain provisions of the Constitution to remain ineffective**

Notwithstanding anything contained in articles 48(3), 141A(1) and 141C(1) of the Constitution, during the period the Non-Party Care-taker government is functioning, provisions in the constitution requiring the President to act on the advice of the prime Minister or upon his prior counter-signature shall be ineffective "

### **CHAPTER III LOCAL GOVERNMENT**

#### **59. Local Government**

(1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law

(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to—

- (a) Administration and the work of public officers,
- (b) the maintenance of public order,

(c) the preparation and implementation of plans relating to public services and economic development

#### **60. Powers of local government bodies**

For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds

### **CHAPTER IV THE DEFENCE SERVICES**

#### **61. Supreme Command**

The supreme command of the defence services of Bangladesh shall vest in the President and the exercise thereof shall be regulated by law 27c and such law shall, during the period in which there is a Non-Party Care-taker Government under article 58B, be administered by the President

#### **62. Recruitment, etc., of defence services**

(1) Parliament shall by law provide for regulating—

(a) the raising and maintaining of the defence services of Bangladesh and of their reserves,

(b) the grant of commissions therein,

(c) the appointment of Chief of Staff of the defence services, and their salaries and allowances, and

(d) the discipline and other matters relating to those services and reserves

(2) Until Parliament by law provides for the matters specified in clause

(1) the President may, by order, provide for such of them as are not already subject to existing law

#### **63. War**

(1) War shall not be declared and the Republic shall not participate in any war except with the assent of Parliament

### **CHAPTER V THE ATTORNEY GENERAL**

#### **64. The Attorney-General**

(1) The President shall appoint a person who is qualified to be appointed as a judge of the Supreme Court to be Attorney-General for Bangladesh

(2) The Attorney-General shall perform such duties as may be assigned to him by the President

(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts of Bangladesh

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine

## **PART V**

### **THE LEGISLATURE**

#### **CHAPTER I**

#### **PARLIAMENT**

##### **65. Establishment of Parliament**

(1) There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic

Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, bye-laws or other instruments having legislative effect

(2) Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election and, for so long as clause (3) is effective, the members provided for in that clause, the member shall be designated as Members of Parliament

(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of commencement of the Constitution (Tenth Amendment) Act, 1990, there shall be reserved thirty seats exclusively for women members, who shall be elected according to law by the members aforesaid Provided that nothing in this clause shall prevent a woman from being elected to any of the seats provided for in clause (2)

(4) The seat of Parliament shall be in the capital

##### **66. Qualifications and disqualifications for election to Parliament**

(1) A person shall subject to the provisions of clause (2), be qualified to be elected as, and to be, a member of Parliament if he is a citizen of Bangladesh and has attained the age of twenty-five years

(2) A person shall be disqualified for election as, or for being, a member of Parliament who—

(a) is declared by a competent court to be of unsound mind,

(b) is an undischarged insolvent,

(c) acquires the citizenship of, or affirms of acknowledges allegiance to, a foreign state,

(d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years unless a period of five years has elapsed since his release,

(dd) holds any office of profit in this service of the Republic other than an office which is declared by law not to disqualify its holders, or

(e) {...}

(f) {...}

(g) is disqualified for such election by or under any law.

(2A) For the purposes of this article a person shall not be deemed to hold an office of profit in the service of the Republic by reason only that he is a President, Prime Minister], Minister, Minister of State or Deputy Minister

(3) {...}

(4) If any dispute arises as to whether a member of Parliament has, after his election, become subject to any of the disqualifications mentioned in clause (2) or as to whether a member of Parliament should vacate his seat pursuant to article 70, the dispute shall be referred to the Election Commission to hear and determine it and the decision of the Commission on such reference shall be final

(5) Parliament may, by law, make such provision as it deems necessary for empowering the Election Commission to give full effect to the provisions of clause (4)

#### 67. Vacation of seats of members

(1) A member of Parliament shall vacate his seat—

(a) if he fails, within the period of ninety days from the date of the first meeting of Parliament after his election, to make and subscribe the oath or affirmation prescribed for a member of Parliament in the Third Schedule Provided that the Speaker may, before the expiration of that period, for good cause extend it;

(b) if he is absent from Parliament, without the leave of Parliament, for ninety consecutive sitting days,

(c) upon a dissolution of Parliament,

(d) if he has incurred a disqualification under clause (2) of article 66;

or

(e) in the circumstances specified in article 70

(2) A member of Parliament may resign his seat by writing under his hand addressed to the Speaker, and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform his functions, by the Deputy Speaker

#### 68. Remuneration, etc., of members of Parliament

Members of Parliament shall be entitled to such remuneration, allowances and privileges as may be determined by Act of Parliament or, until so determined, by order made by the President

**69. Penalty for member sitting or voting before taking oath**

If a person sits or votes as a member of Parliament before he makes or subscribes the oath or affirmation in accordance with this Constitution, or when he knows that he is not qualified or is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of one thousand taka to be recovered as a debt due to the Republic

**70. Vacation of seat on resignation, etc.**

(1) A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against the party

Explanation — If a member of Parliament—

(a) being present in Parliament abstains from voting, or

(b) absents himself from any sitting of Parliament, ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party

(2) If, at any time, any question as to the leadership of the Parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convene a meeting of all members of Parliament of that party in accordance with the Rules of Procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in the Parliament

(3) If a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that Party

**71 Bar against double membership**

(1) No person shall at the same time be a member of Parliament in respect of two or more constituencies

(2) Nothing in clause (1) shall prevent a person from being at the same time a candidate for two or more constituencies, but in the event of his being elected for more than one—

(a) within thirty days after his last election the person elected shall deliver to the Chief Election Commissioner a signed declaration specifying the constituency which he wishes to represent, and the seats of the other constituencies for which he was elected shall thereupon fall vacant,

(b) if the person elected fails to comply with sub-clause (a) all the seats for which he was elected shall fall vacant,

(c) the person elected shall not make or subscribe the oath or affirmation of a member of Parliament until the foregoing provisions of this clause, so far as applicable, have been complied with

**72. Sessions of Parliament**

(1) Parliament shall be summoned, prorogued and dissolved by the President by public notification and when summoning Parliament the President shall specify the time and place of the first meeting

Provided that a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session

Provided further that in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing

(2) Notwithstanding the provisions of clause (1) Parliament shall be summoned to meet within thirty days after the declaration of the results of polling at any general election of members of Parliament

(3) Unless sooner dissolved by the President, Parliament shall stand dissolved on the expiration of the period of five years from the date of its first meeting

Provided that at any time when the Republic is engaged in war the period may be extended by Act of Parliament by not more than one year at a time but shall not be so extended beyond six months after the termination of the war

(4) If after a dissolution and before the holding of the next general election of members of Parliament the President is satisfied that owing to the existence of a state of war in which the Republic is engaged it is necessary to recall Parliament, the President shall summon the Parliament that has been dissolved to meet

(5) Subject to the provisions of clause (1) the sittings of Parliament shall be held at such times and places as Parliament may, by its rules of procedure or otherwise determine

**73. President's address and messages to Parliament**

(1) The President may address Parliament, and may send messages thereto

(2) At the commencement to the first session after a general election of members of Parliament and at the commencement of the first session of each year the President shall address Parliament

(3) Parliament shall, after the presentation of an address by the President, or the receipt of a message from him, discuss the matter referred to in such address or message

**73A Rights of Ministers as respects Parliament**

(1) Every Minister shall have the right to speak in, and otherwise to take part in the proceedings of, Parliament, but shall not be entitled to vote or to speak on any matter not related to his Ministry unless he is a member of Parliament also

(2) In this article, "Minister" includes a Prime Minister, Minister of State and Deputy Minister

**74. Speaker and Deputy Speaker**

(1) Parliament shall at the first sitting after any general election elect from among its members a Speaker and a deputy Speaker, and if either office becomes vacant shall within seven days or, if Parliament is not then sitting, at its first meeting thereafter, elect one of its members to fill the vacancy

(2) The Speaker or Deputy Speaker shall vacate his office—

(a) if he ceases to be a member of Parliament,

(b) if he becomes a Minister,

(c) if Parliament passes a resolution (after not less than fourteen days, notice has been given of the intention to move the resolution) supported by the votes of a majority of all the members thereof, requiring his removal from office,

(d) if he resigns his office by writing under his hand delivered to the President,

(e) if after a general election another member enters upon that office,  
or

(f) in the case of the Deputy Speaker, if he enters upon the office of Speaker

(3) While the office of the Speaker is vacant or the Speaker is acting as President, or if it is determined by Parliament that the Speaker is otherwise unable to perform the functions of his office, those functions shall be performed by the Deputy Speaker or, if the office of the Deputy Speaker is vacant, by such member of Parliament as may be determined by or under the rules of procedure of Parliament, and during the absence of the Speaker from any sitting of Parliament the Deputy Speaker or, if he also is absent, such person as may be determined by or under the rules of procedure, shall act as Speaker

(4) At any sitting of Parliament, while a resolution for the removal of the Speaker from his office is under consideration the Speaker (or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker) shall not preside, and the provisions of clause (3) shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be the Deputy Speaker is absent

(5) The Speaker or the Deputy Speaker, as the case may be, shall have the right to speak in, and otherwise to take part in, the proceedings of Parliament while any resolution for his removal from office is under consideration in Parliament, and shall be entitled to vote but only as a member

(6) Notwithstanding the provisions of clause (2) the Speaker or, as the case may be, the deputy speaker, shall be deemed to continue to hold office until his successor has entered upon office

**75. Rules of procedure, quorum, etc.**

(1) Subject to this Constitution—

(a) the procedure of Parliament shall be regulated by rules of procedure made by it, and until such rules are made shall be regulated by rules of procedure made by the President,

(b) a decision in Parliament shall be taken by a majority of the votes of the members present and voting, but the person presiding shall not vote except when there is an equality of votes, in which case he shall exercise a casting vote,

(c) no proceeding in Parliament shall be invalid by reason only that there is a vacancy in the membership thereof or that a person who was not entitled to do so was present at, or voted or otherwise participated in, the proceeding

(2) If at any time during which Parliament is in session the attention of the person presiding is drawn to the fact that the number of members present is less than sixty, he shall either suspend the meeting until at least sixty members are present, or adjourn it

**76. Standing committees of Parliament**

(1) Parliament shall appoint from among its members the following standing committees, that is to say—

(a) a public accounts committee,

(b) committee of privileges, and

(c) such other standing committees as the rules of procedure of Parliament require

(2) In addition to the committees referred to in clause (1), Parliament shall appoint other standing committees, and a committee so appointed may, subject to this Constitution and to any other law—

(a) examine draft Bills and other legislative proposals,

(b) review the enforcement of laws and propose measures for such enforcement;

(c) in relation to any matter referred to it by Parliament as a matter of public importance, investigate or inquire into the activities or administration of a Ministry and may require it to furnish, through an authorised representative, relevant information and to answer questions, orally or in writing,

(d) perform any other function assigned to it by Parliament

(3) Parliament may by law confer on committees appointed under this article powers for—

(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise,

(b) compelling the production of documents

**77. Ombudsman**

(1) Parliament may, by law, provide for the establishment of the office of Ombudsman

(2) The Ombudsman shall exercise such powers and perform such functions as Parliament may, by law, determine, including the power to investigate any action taken by a Ministry, a public officer or a statutory public authority

(3) The Ombudsman shall prepare an annual report concerning the discharge of his functions, and such report shall be laid before Parliament

**78. Privileges and immunities of Parliament and members**

(1) The validity of the proceedings in Parliament shall not be questioned in any court

(2) A member or officer of Parliament in whom powers are vested for the regulation of procedure, the conduct of business or the maintenance of order in Parliament, shall not in relation to the exercise by him of any such powers be subject to the jurisdiction of any court

(3) A member of Parliament shall not be liable to proceedings in any court in respect of anything said, or any vote given, by him in Parliament or in any committee thereof

(4) A person shall not be liable to proceedings in any court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding

(5) Subject to this article, the privileges of Parliament and of its committees and members may be determined by Act of Parliament

**79. Secretariat of Parliament**

(1) Parliament shall have its own secretariate

(2) Parliament may, by law, regulate the recruitment and conditions of service of persons appointed to the secretariat of Parliament

(3) Until provision is made by Parliament the President may, after consultation with the Speaker, make rules regulating the recruitment and condition of service of persons appointed to the secretariat of Parliament, and rules so made shall have effect subject to the provisions of any law

**CHAPTER II****LEGISLATIVE AND FINANCIAL PROCEDURES****80. Legislative procedure**

(1) Every proposal in Parliament for making law shall be made in the form of a Bill

(2) When a Bill is passed by Parliament it shall be presented to the President for assent

(3) The President, within fifteen days after a Bill is presented to him shall assent to the Bill or, in the case of a Bill other than a money Bill may return it

to parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered, and that any amendments specified by him in the message be considered, and if he fails so to do he shall be deemed to have assented to the Bill at the expiration of that period

(4) If the President so returns the Bill Parliament shall consider it together with the President's message, and if the Bill is again passed by Parliament with or without amendments by the votes of a majority of the total number of members of Parliament, it shall be presented to the President for his assent, whereupon the President shall assent to the Bill within the period of seven days after it has been presented to him, and if he fails to do so he shall be deemed to have assented to the Bill on the expiration of that period

(5) When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament

### 81. Money Bills

(1) In this Part "Money Bill" means a Bill containing only provisions dealing with all or any of the following matters—

(a) the imposition, regulation, alteration, remission or repeal of any tax,

(b) the borrowing of money or the giving of any guarantee by the Government, or the amendment of any law relating to the financial obligations of the Government,

(c) the custody of the Consolidated Fund, the payment of money into, or the issue or appropriation of moneys from, the Fund,

(d) the imposition of a charge upon the Consolidated Fund, or the alteration or abolition of any such charge,

(e) the receipt of moneys on account of the Consolidated Fund or the Public Account of the Republic, or the custody or issue of such moneys, or the audit of the accounts of the Government,

(f) any subordinate matter incidental to any of the matters specified in the foregoing sub-clauses

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition or alteration of any fine or other pecuniary penalty, or for the levy or payment of a licence fee or a fee or charge for any service rendered, or by reason only that it provides for the imposition, regulation, alteration, remission or repeal of any tax by a local authority or body for local purposes

(3) Every Money Bill shall, when it is presented to the President for his assent, bear a certificate under the hand of the Speaker that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be questioned in any court

### 82. Recommendation for financial measures

No Money Bill, or any Bill which involves expenditure from public

moneys, shall be introduced into Parliament except on the recommendation of the President

Provided that no recommendation shall be required under this article for the moving of an amendment making provision for the reduction or abolition of any tax

### **83. No taxation except by or under Act of Parliament**

No tax shall be levied or collected except by or under the authority of an Act of Parliament

### **84. Consolidated Fund and the Public Account of the Republic**

(1) All revenues received by the Government, all loans raised by the Government, and all moneys received by it in repayment of any loan, shall form part of one fund to be known as the Consolidated Fund

(2) All other public moneys received by or on behalf of the Government shall be credited to the Public Account of the Republic

### **85. Regulation of public moneys**

The custody of public moneys, their payment into and the withdrawal from the Consolidated Fund or, as the case may be, the Public Account of the Republic, and matters connected with or ancillary to the matters aforesaid, shall be regulated by Act of Parliament, and until provision in that behalf is so made, by rules made by the President

### **86. Moneys payable to Public Account of Republic**

All moneys received by or deposited with—

(a) any person employed in the service of the Republic or in connection with the affairs of the Republic, other than revenues or moneys which by virtue of clause (1) of article 84 shall form part of the Consolidated Fund, or

(b) any court to the credit of any cause, matter, account or persons, shall be paid into the Public Account of the Republic

### **87. Annual financial statement**

(1) There shall be laid before Parliament in respect of each financial year, a statement of the estimated receipts and expenditure of the Government for that year, in this Part referred to as the annual financial statement

(2) The annual financial statement shall show separately—

(a) the sums required to meet expenditure charged by or under this Constitution upon the Consolidated Fund, and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund, and shall distinguish expenditure on revenue account from other expenditure

### **88. Charges on Consolidated Fund**

The following expenditure shall be charged upon the Consolidated Fund—

(a) the remuneration payable to the President and other expenditure relating to his office,

(b) the remuneration payable to—

(i) the Speaker and Deputy Speaker;

(ii) the Judges of the Supreme Court,

(iii) the Comptroller and Auditor-General;

(iv) the Election Commissioners,

(v) the members of the Public Service Commissions,

(c) the administrative expenses of, including remuneration payable to, officers and servants of Parliament, the Supreme Court the Comptroller and Auditor-General, the Election Commission and the Public Service Commissions,

(d) all debt charges for which the Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans and the service and redemption of debt,

(e) any sums required to satisfy a judgment, decree or award against the Republic by any court or tribunal, and

(f) any other expenditure charged upon the Consolidated Fund by this Constitution or by Act of Parliament

#### 89. Procedure relating to annual financial statement

(1) So much of the annual financial statement as relates to expenditure charged upon the Consolidated Fund may be discussed in, but shall not be submitted to the vote of, Parliament

(2) So much of the annual financial statement as relates to other expenditure shall be submitted to Parliament in the form of demands for grants, and Parliament shall have power to assent to or to refuse to assent to any demand, or to assent to it subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the President

#### 90. Appropriation Act

(1) As soon as may be after the grants under article 89 have been made by Parliament there shall be introduced in Parliament a Bill to provide for appropriation out of the Consolidated Fund of all moneys required to meet—

(a) the grants so made by Parliament, and

(b) the expenditure charged on the Consolidated Fund but not exceeding in any case the amount shown in the annual financial statement laid before Parliament

(2) No amendment shall be proposed in Parliament to any such Bill which has the effect of varying the amount of any grant so made or altering the purpose to which it is to be applied, or of varying the amount of any expenditure charged on the Consolidated Fund

(3) Subject to the provisions of this Constitution no money shall be withdrawn from the Consolidated Fund except under appropriation made by law passed in accordance with the provisions of this article

#### **91. Supplementary and excess grants**

If in respect of any financial year it is found—

(a) that the amount authorised to be expended for a particular service for the current financial year is insufficient or that a need has arisen for expenditure upon some new service not included in the annual financial statement for that year, or

(b) that any money has been spent on a service during a financial year in excess of the amount granted for that service for that year The President shall have power to authorise expenditure from the Consolidated Fund whether or not it is charged by or under the Constitution upon that Fund and shall cause to be laid before Parliament a supplementary financial statement setting out the estimated amount of the expenditure or, as the case may be an excess financial statement setting out the amount of the excess, and the provisions of articles 87 to 90 shall (with the necessary adaptations) apply in relation to those statements as they apply in relation to the annual financial statement

#### **92. Votes on account, votes of credit, etc.**

(1) Notwithstanding anything in the foregoing provisions of this Chapter, Parliament shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 89 for the voting of such grant and the passing of a law in accordance with the provisions of article 90 in relation to that expenditure,

(b) to make a grant for meeting an unexpected demand upon the resources of the Republic when on account of the magnitude or the indefinite character of the service the demand cannot be specified with the details ordinarily given in an annual financial statement,

(c) to make an exceptional grant which forms no part of the current service of any financial year, and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund for the purposes for which such grants are made

(2) The provisions of articles 89 and 90 shall have effect in relation to the making of any grant under clause (1), and to any law to be made under that clause, as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and to the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund to meet such expenditure

(3) Notwithstanding anything contained in the foregoing provisions of this Chapter, if, in respect of a financial year, Parliament—

(a) has failed to make the grants under article 89 and pass the law under article 90 before the beginning of that year and has not also made any grant in advance under this article, or

(b) has failed to make the grants under article 89 and pass the law under article 90 before the expiration of the period for which the grants in advance, if any, were made under this article, the President may, upon the advice of the prime Minister, by order, authorise the withdrawal from the Consolidated Fund moneys necessary to meet expenditure mentioned in the financial statement for that year for a period not exceeding sixty days in year, pending the making of the grants and passing of the law

### CHAPTER III

## ORDINANCE MAKING POWER

### 93. Ordinance making power

(1) At any time when Parliament stands dissolved or is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament

Provided that no Ordinance under this clause shall make any provision—

(i) which could not lawfully be made under this Constitution by Act of Parliament,

(ii) for altering or repealing any provision of this Constitution; or

(iii) continuing in force any provision of an Ordinance previously made

(2) An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by Parliament before such expiration, upon the passing of the resolution

(3) At any time when Parliament stands dissolved the President may, if he is satisfied that circumstances exist which render such action necessary, make and promulgate an Ordinance authorising expenditure from the Consolidated Fund, whether the expenditure is charged by the Constitution upon that fund or not, and any Ordinance so made shall, as from its promulgation, have the like force of law as an Act of Parliament

(4) Every Ordinance promulgated under clause (3) shall be laid before Parliament as soon as may be, and the provisions for articles 87, 89 and 90 shall, with necessary adaptations, be complied with in respect thereof within thirty days of the reconstitution of Parliament.

**PART VI**  
**THE JUDICIARY**

**CHAPTER I**  
**THE SUPREME COURT**

**94. Establishment of Supreme Court**

(1) There shall be a Supreme Court for Bangladesh (to be Known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division

(2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division

(3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division, and the other Judges shall sit only in the High Court Division

(4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions

**95. Appointment of Judges**

(1) The Chief Justice and other Judges shall be appointed by the President

(2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and—

(a) has, for not less than ten years, been a advocate of the Supreme Court, or

(b) has, for not less than ten years, held judicial office in the territory of Bangladesh, or

(c) has such other qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court

(3) In this articles, "Supreme Court" includes 'a Court which at any time before the commencement of the Second Proclamation (Tenth Amendment) Order, 1977, exercised jurisdiction as a High Court or Supreme Court in the territory now forming part of Bangladesh

**96. Tenure of office of Judges**

(1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-five years

(2) A Judge shall not be removed from office except in accordance with the following provisions of this article

(3) There shall be a Supreme Judicial Council, in this article referred to as the council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member

(4) The function of the Council shall be—

(a) to prescribe a Code of Conduct to be observed by the Judges, and

(b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge—

(a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or

(b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office

(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court

(8) A Judge may resign his office by writing under his hand addressed to the President

#### 97. Temporary appointment of Chief Justice

If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division

#### 98. Additional Supreme Court Judges

Notwithstanding the provisions of article 94, if the President is satisfied that the number of the Judges of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified person to be Additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court Division to sit in the Appellate Division for any temporary period as an ad hoc Judge and such Judge while so sitting shall exercise the same jurisdiction, powers and functions as a Judge of the Appellate Division

Provided that nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or as an Additional Judge for a further period under this article

**99. Disabilities of Judges**

(1) Except as provided in clause (2), a person who has held office as a Judge otherwise than as an Additional Judge shall not, after his retirement or removal therefrom, plead or act before any court or authority or hold any office or profit in the service of the Republic not being a judicial or quasi-judicial office or the office of Chief Adviser or Adviser

(2) A person who has held office as a Judge of the High Court Division may, after his retirement or removal therefrom, plead or act before the Appellate Division

**100. Seat of Supreme Court**

The permanent seat of the Supreme Court, shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint

**101. Jurisdiction of High Court Division**

The High Court Division shall have such original, appellate and other jurisdictions, powers and functions as are or may be conferred on it by this Constitution or any other law

**102. Powers of High Court Division to issue certain orders and directions, etc.**

(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any the fundamental rights conferred by Part III of this Constitution

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—

(a) on the application of any person aggrieved, make an order—

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do, or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect, or

(b) on the application of any person, make an order—

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner, or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of—

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work, or

(b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b)

(5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies

### 103. Jurisdiction of Appellate Division

(1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division

(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division—

(a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution, or

(b) has sentenced a person to death or to imprisonment for life, or

(c) has imposed punishment on a person for contempt of that division, and in such other cases as may be provided for by Act of Parliament

(3) An appeal to the Appellate Division for a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal

(4) Parliament may by law declare that the provisions of this Article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division

### 104. Issue and execution of processes of Appellate Division

The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document

**105. Review of Judgments or orders by Appellate Division**

The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division to review any judgment pronounced or order made by it

**106. Advisory jurisdiction of Supreme Court**

If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the division may, after such hearing as it thinks fit, report its opinion thereon to the President

**107. Rule making power of the Supreme Court**

(1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it

(2) The Supreme Court may delegate any of its functions under clause (1) and article 113 to a division of that Court or to one or more Judges

(3) Subject to any rules made under this article the Chief Justice shall determine which Judges are to constitute any Bench of a division of the Supreme Court and which Judges are to sit for any purpose

(4) The Chief Justice may authorise the next most senior Judge of either division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article

**108. Supreme Court as court of record**

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself

**109. Superintendence and control over courts**

The High Court shall have superintendence and control over all courts and tribunals subordinate to it

**110. Transfer of cases from subordinate courts to High Court Division**

If the High Court Division is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may—

(a) either dispose of the case itself, or

(b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgement of the division on such question, and the court to which the case is so returned or

transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgement

**111. Binding effect of Supreme Court judgments**

The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it

**112. Action in aid of Supreme Court**

All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court

**113. Staff of Supreme Court**

(1) Appointments of the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that Court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court

(2) Subject to the provisions of any Act of Parliament the conditions of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that Court

## **CHAPTER II**

### **SUBORDINATE COURTS**

**114. Establishment of subordinate courts**

There shall be in addition to the Supreme Court such courts subordinate thereto as may be established by law

**115. Appointments to subordinate courts**

Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf

**116. Control and discipline of subordinate courts**

The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court

**116A. Judicial officers to be independent in the exercise of their functions**

Subject to the provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions

**CHAPTER III****ADMINISTRATIVE TRIBUNALS****117. Administrative tribunals**

(1) Notwithstanding anything hereinbefore contained, Parliament may by law establish one or more administrative tribunals to exercise jurisdiction in respect of matter relating to or arising out of—

(a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishment,

(b) the acquisition, administration, management and disposal of any property vested in or managed by the Government by or under any law, including the operation and management of, and service in any nationalised enterprise or statutory public authority,

(c) any law to which clause (3) of article 102 applies

(2) Where any administrative tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal

Provided that Parliament may, by law, provide for appeals from, or the review of, decisions of any such tribunal

**PART VII****ELECTIONS****118. Establishment of Election Commission**

(1) There shall be an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any as the President may from time to time direct, and the appointment of the Chief Election Commissioner and other Election commissioners (if any) shall, subject to the provisions of any law made in that behalf, be made by the President

(2) When the Election Commission consists of more than one person, the Chief Election Commissioner shall act as the Chairman thereof

(3) Subject to the provisions of this Constitution the term of office of an Election Commissioner shall be five years from the date on which he enters upon his office, and—

(a) a person who has held office as Chief Election Commissioner shall not be eligible for appointment in the service of the Republic,

(b) any other election Commissioner shall, on ceasing to hold office as such, be eligible for appointment as Chief Election Commissioner but shall not be otherwise eligible for appointment in the service of the Republic

(4) The Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law

(5) Subject to the provisions of any law made by Parliament, the conditions of service of Election Commissioners shall be such as the President may, by order, determine.

Provided that an Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court

(6) An Election Commissioner may resign his office by writing under his hand address to the President

### **119. Functions of Election Commission**

(1) The superintendence, direction and control of the preparation of the election rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with his Constitution and any other law—

- (a) hold elections to the office of President,
- (b) hold elections of members of Parliament,
- (c) delimit the constituencies for the purpose of elections to Parliament, and
- (d) prepare electoral roles for the purpose of elections to the office of President and to Parliament

(2) The Election Commission shall perform such functions, in addition to those specified in the foregoing clauses, as may be prescribed by this Constitution or by any other law

### **120. Staff of Election Commission**

The President shall, when so requested by the Election Commission, make available to it such staff as may be necessary for the discharge of its functions under this Part

### **121. Single electoral roll for each constituency**

There shall be one electoral roll for each constituency for the purposes of elections to Parliament, and no special electoral roll shall be prepared so as to classify electors according to religion, race caste or sex.

### **122. Qualifications for registration as voter**

- (1) The elections to Parliament shall be on the basis of adult franchise
- (2) A person shall be entitled to be enrolled on the electoral roll for a constituency delimited the purpose of election to Parliament, if he—
  - (a) is a citizen of Bangladesh;
  - (b) is not less than eighteen years of age,
  - (c) does not stand declared by a competent court to be of unsound mind, and
  - (d) is or is deemed by law to be a resident of that constituency

**123. Time for holding elections**

(1) In the case of a vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety to sixty days prior to the date of expiration of the term

Provided that if the term expires before the dissolution of the Parliament by members of which he was elected the election to fill the vacancy shall not be held until after the next general election of members of Parliament, but shall be held within thirty days after the first sitting of Parliament following such general election.

(2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy

(3) A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration

(4) An election to fill the seat of a member of Parliament which falls vacant otherwise than by reason of the dissolution of Parliament shall be held within ninety days of the occurrence of the vacancy

Provided that in a case where, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period

**124. Parliament may make provision as to elections**

Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with election to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of Parliament

**125. Validity of election law and elections**

Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 124, shall not be called in question in any court,

(b) no election to the offices of President or to Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by Parliament

**126. Executive authorities to assist Election Commission**

It shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions

**PART VIII****THE COMPTROLLER AND AUDITOR-GENERAL****127. Establishment of office of Auditor-General**

(1) There shall be a Comptroller and Auditor-General of Bangladesh (hereinafter referred to as the Auditor-General) who shall be appointed by the President

(2) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of the Auditor-General shall be such as the President may, by order, determine.

**128. Functions of Auditor-General**

(1) The public accounts of the Republic and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Auditor-General and for that purpose he or any person authorised by him in that behalf shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any person in the service of the Republic

(2) Without prejudice to the provisions of clause (1), if it is prescribed by law in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be so prescribed

(3) Parliament may by law require the Auditor-General to exercise such functions, in addition to those specified in clause (1), as such law may prescribe, and until provision is made by law under this clause the President may, by order, make such provision

(4) The Auditor-General, in the exercise of this functions under clause (1), shall not be subject to the direction or control of any other person or authority

**129. Term of office of Auditor-General**

(1) The Auditor-General shall, subject to this article, hold office until he attains the age of sixty years

(2) The Auditor-General shall not be removed from his office except in like manner and on the like ground as a judge of the Supreme Court

(3) The Auditor-General may resign his office by writing under his hand addressed to the President

(4) On ceasing to hold office the Auditor-General shall not be eligible for further office in the service of the Republic

**130. Acting Auditor-General**

At any time when the office of Auditor-General is vacant, or the President is satisfied that the Auditor-General is unable to perform his functions on account of absence, illness or any other cause, the President may appoint a person to act as Auditor-General and to perform the functions of that office until an appointment is made under article 127 or, as the case may be until the Auditor-General resumes the functions of his office

**131. Form and manner of keeping public accounts**

The public accounts of the Republic shall be kept in such form and in such manner as the Auditor-General may, with the approval of the President, prescribe.

**132. Reports of Auditor-General to be laid before Parliament**

The reports of the Auditor-General relating to the Reports of public accounts of the Republic shall be submitted to the President, who shall cause them to be laid before Parliament

**PART IX****THE SERVICES OF BANGLADESH****CHAPTER 1****SERVICES****133. Appointment and conditions of service**

Subject to the provisions of this Constitution Parliament may by law regulate the appointment and conditions of service of person in the service of the Republic

Provided that it shall be competent for the President to make rules regulating the appointment and the conditions of service such person until provision in that behalf is made by or under any law, and rules so made shall have effect subject to the provisions of any such law

**134. Tenure of office**

Except as otherwise provided by this Constitution every person in the service of the Republic shall hold office during the pleasure of the President

**135. Dismissal, etc., of civilian public officers**

(1) No person who holds any civil post in the service of the Republic shall be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed

(2) No such person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why that action should not be taken

Provided that this clause shall not apply—

(i) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction of a criminal offence, or

(ii) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for a reason recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause, or

(iii) where the President is satisfied that in the interests of the security of the State it is not expedient to give that person such an opportunity

(3) If in respect of such a person the question arises whether it is reasonably practicable to give him an opportunity to show cause in accordance with clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final

(4) Where a person is employed in the service of the Republic under a written contract and that contract is terminated by due notice in accordance with its terms, he shall not, by reason thereof, be regarded as removed from office for the purposes of this article

### **136. Reorganisation of service**

Provision may be made by law for the reorganisation of the service of the Republic by the creation, amalgamation or unification of services and such law may vary or revoke any condition of service of a person employed in the service of the Republic

### **137. Establishment of Commissions**

Provision shall be made by law for establishing one or more Public Service Commissions for Bangladesh, each of which shall consist of a Chairman and such other members as shall be prescribed by law

### **138. Appointment of members**

(1) The chairman and other members of each Public Service Commission shall be appointed by the President

Provided that not less than one-half of the members of a commission shall be persons who have held office for twenty years or more in the service of any Government which has at any time functioned within the territory of Bangladesh

(2) Subject to any law made by Parliament the conditions of service of the Chairman and other members of a Public Service Commission shall be such as the President may, by order, determine

### **139. Term of office**

(1) The term of office of the Chairman and other members of a Public Service Commission shall, subject to the provisions of this article, expire five years after the date on which he entered upon his office, or when he attains the age of sixty-two years, whichever is earlier,

(2) The Chairman and other members of such a commission shall be removed from office except in like manner and on the like grounds as a Judge of the Supreme Court

(3) A Chairman or other member of a Public Service Commission may resign his office by writing under his hand addressed to the President

(4) On ceasing to hold office a member of a Public Service Commission shall not be eligible for further employment in the service of the Republic, but, subject to the provisions of clause (1)—

(a) a Chairman so ceasing shall be eligible for re-appointment for one further term; and

(b) a member (other than the Chairman) so ceasing shall be eligible for re-appointment for one further term or for appointment as chairman of a Public Service Commission

#### 140. Functions of Commissions

(1) The functions of a Public Service Commission shall be—

(a) to conduct tests examinations for the selection of suitable persons for appointment of the service of the Republic,

(b) to advise the President on any matter on which the Commission is consulted under clause (2) or on any matter connected with its functions which is referred to the Commission by the President, and

(c) such other functions as may be prescribed by law

(2) Subject to the provisions of any law made by Parliament, and any regulation (not inconsistent with such law) which may be made by the President after consultation with a commission, the President shall consult a commission with respect to

(a) matters relating to qualifications for, and methods of recruitment to, the service of the Republic,

(b) the principles to be followed in making appointments to that service and promotions and transfers from one branch of the service to another, and the suitability of candidates for such appointment, promotions and transfers,

(c) matters affecting the terms and conditions (including person rights) of that service, and

(d) the discipline of the service

#### 141. Annual report

(1) Each commission shall, not later than the first day of March each year, prepare and submit to the President a report of the performance of its functions during the period ended on the previous 31st day of December

(2) The report shall be accompanied by a memorandum setting out, so far as is known to the Commission—

(a) the cases, if any, in which its advice was not accepted and the reasons why it was not accepted,

(b) the cases where the Commission ought to have been consulted and was not consulted, and the reasons why it was not consulted

(3) The President shall cause the report and memorandum to be laid before Parliament at its first meeting held after 31st March in the year in which the report was submitted

**PART IXA****EMERGENCY PROVISIONS****141A. Proclamation of Emergency**

(1) If the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency

Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister

**(2) A Proclamation of Emergency—**

(a) may be revoked by a subsequent Proclamation,

(b) shall be laid before Parliament,

(c) shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it has been approved by a resolution of Parliament.

Provided that if any such Proclamation is issued at a time when Parliament stands dissolved or the dissolution of Parliament takes place during the period of one hundred and twenty days referred to in sub-clause (c), the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its re-constitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament

(3) A Proclamation of Emergency declaring that the security of Bangladesh, or any part thereof, is threatened by war or external aggression or by internal disturbance may be made before the actual occurrence of war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof

**141B. Suspension of provisions of certain articles during emergencies**

While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40 and 42 shall restrict the power of the State to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall, to the extent of the incompetence, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect

**141C. Suspension of enforcement of fundamental right during emergencies**

(1) While a Proclamation of Emergency is in operation, the President may, on the written advice of the Prime Minister, by order, declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the

Proclamation is in force or for such shorter period as may be specified in the order

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof

(3) Every order made under this article shall, as soon as may be, be laid before Parliament

## PART X

### AMENDMENT OF THE CONSTITUTION

#### 142. Power to amend any provision of the Constitution

(1) Notwithstanding anything contained in this Constitution—

(a) any provision thereof may be amended by way of addition, alteration, substitution or repeal by Act of Parliament

Provided that—

(i) no Bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amend a provision of the Constitution,

(ii) no such Bill shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament,

(b) when a Bill passed as aforesaid is presented to the President for his assent he shall, within the period of seven days after the Bill is presented to him assent to the Bill, and if he fails so to do he shall be deemed to have assented to it on the expiration of that period

(1A) Notwithstanding anything contained in clause (1), when a Bill, passed as aforesaid, which provides for the amendment of the Preamble or any provisions of articles 8, 48 or 56 or this article, is presented to the President for assent, the President, shall within the period of seven days, after the Bill is presented to him, cause to be referred to a referendum the question whether the Bill should or should not be assented to

(1B) A referendum under this article shall be conducted by the Election Commission, within such period and in such manner as may be provided by law, amongst the person enrolled on the electoral roll prepared for the purpose of election to Parliament

(1C) On the day on which the result of the referendum conducted in relation to a Bill under this article is declared, the President shall be deemed to have—

(a) assented to the Bill, if the majority of the total votes cast are in favour of the Bill being assented to, or

(b) Withheld assent therefrom, if the majority of the total votes cast are not in favour of the Bill being assented to

(1D) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament

(2) Nothing in article 26 shall apply to any amendment made under this article

## **PART XI**

### **MISCELLANEOUS**

#### **143. Property of the Republic**

(1) There shall vest in the Republic, in addition to any other land or property lawfully vested—

(a) all minerals and other things of value underlying any land of Bangladesh,

(b) all lands, minerals and other things of value underlying the ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh, and

(c) any property located in Bangladesh that has no rightful owner.

(2) Parliament may from time to time by law provide for the determination of the boundaries of the territory of Bangladesh and of the territorial waters and the continental shelf of Bangladesh

#### **144. Executive authority in relation to property, trade, etc.**

The executive authority of the Republic shall extend to the acquisition, sale, transfer, mortgage and disposal of property, the carrying on of any trade or business and the making of any contract

#### **145. Contracts and deeds**

(1) All contracts and deeds made in exercise of the executive authority of the Republic shall be expressed to be made by the President, and shall be executed on behalf of the President by such person and in such manner as he may direct or authorise

(2) Where a contract or deed is made or executed in exercise of the executive authority of the Republic, neither the President nor any other person making or executing the contract or deed in exercise of the authority shall be personally liable in respect thereof, but this article shall not prejudice the right of any person to take proceedings against the Government

#### **145A. International treaties**

All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament

Provided that any such treaty connected with national security shall be laid in a secret session of Parliament

#### **146. Suits in name of Bangladesh**

The Government of Bangladesh may sue or be sued by the name of Bangladesh

**147. Remuneration, etc., of certain officers**

(1) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any office to which this article applies shall be determined by or under Act of parliament, but until they are so determined—

(a) they shall be those (if any) appertaining to the person holding or, as the case may be acting in the office in question immediately before the commencement of this Constitution; or

(b) if the preceding sub-clause is not applicable, they shall be determined by order made by the President

(2) The remuneration, privileges and other terms and conditions of service of a person holding or acting in any office to which this article applies shall not be varied to the disadvantage of any such person during his term of office

(3) No person appointed to or acting in any office to which this article applies shall hold any office, post or position of profit or emolument or take any part whatsoever in the management or conduct of any company, association or body having profit or gain as its object

Provided that such person shall not for the purposes of this clause be deemed to hold any such office, post or position by reason only that he holds or is acting in the office first above-mentioned

(4) This article applies to the offices of—

(a) President,

(b) Prime Minister and Chief Advisor,

(c) Speaker or Deputy Speaker,

(d) Minister, Advisor, Minister of State or Deputy Minister,

(e) Judge of the Supreme Court,

(f) Comptroller and Auditor-General,

(g) Election Commissioner,

(h) Member of a Public Service Commission

**148. Oaths of office**

(1) A person elected or appointed to any office mentioned in the Third Schedule shall before entering upon the office make and subscribe an oath or affirmation (in this article referred to as "an oath") in accordance with that Schedule

(2) Where under this Constitution an oath is required to be administered by a specified person, it may be administered by such other person and at such place as may be designated by that person

(3) Where under this Constitution a person is required to make an oath before he enters upon an office he shall be deemed to have entered upon the office immediately after he makes the oath

**149. Saving for existing laws**

Subject to the provisions of this Constitution all existing laws shall continue to have effect but may be amended or repealed by law made under this Constitution

**150. Transitional and temporary provisions**

The transitional and temporary provisions set out in the Fourth Schedule shall have effect notwithstanding any other provisions of this Constitution.

**151. Repeals**

The following President's Orders are hereby repealed—

- (a) The laws Continuance Enforcement Order made on 10th April, 1971;
- (b) The Provisional Constitution of Bangladesh Order, 1972;
- (c) The High Court of Bangladesh Order, 1972 (P O. No 5 of 1972),
- (d) The Bangladesh Comptroller and Auditor-General Order, 1972 (P O No. 15 of 1972)
- (e) The Constituent Assembly of Bangladesh Order, 1972 (P O No. 22 of 1972)
- (f) The Bangladesh Election Commission Order, 1972 (P O No. 25 of 1972)
- (g) The Bangladesh Public Service Commissions Order 1972 (P O No. 34 of 1972)
- (h) The Bangladesh Transaction of Government Business Order, 1972 (P.O. No 58 of 1972)

**152. Interpretation**

(1) In this Constitution, except where the subject or context otherwise requires—

"Administrative unit" means a district or other area designated by law for the purposes of article 59,

"Advisor" means a person appointed to that office under article 58C,

"the Appellate Division" means the Appellate Division of the Supreme Court,

"article" means an article of this Constitution,

"borrowing" includes the raising of money by annuity, and "loan" shall be construed accordingly,

"the capital" has the meaning assigned to that expression in article 5,

"Chief Adviser" means a person appointed to that office under article 58C;

"Chief Election Commissioner" means a person appointed to that office under article 118,

"The Chief Justice" means the Chief Justice of Bangladesh,

"citizen" means a person who is a citizen of Bangladesh according to the law relating to citizenship,

"clause" means a clause of the article in which the expression occurs,

"court" means any court of law including Supreme Court,

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charge" shall be construed accordingly,

"disciplinary law" means a law regulating the discipline of any disciplined force,

"disciplined force" means

(a) the army navy or air force,

(b) the police force,

(c) any other force declared by law to be a disciplined force within the meaning of this definition,

"district judge" includes additional district judge,

"existing law" means any law in force in, or in any part of, the territory of Bangladesh immediately before the commencement of this Constitution, whether or not it has been brought into operation,

"financial year" means a year commencing on the first day of July,

"guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount,

"the High Court Division" means the High Court Division of the Supreme Court,

"judge" means a judge of a division of the Supreme Court,

"judicial service" means a service comprising person holding judicial posts not being posts superior to that of a district judge,

"law" means any Act, ordinance, order rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh,

"Parliament" means the Parliament for Bangladesh established by article 65,

"Part" means a Part of this Constitution,

"pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay or gratuity so payable by way of the return or any addition thereto of subscriptions to a provident fund,

"political party" includes a group or combination of persons who operate within or outside Parliament under a distinctive name and who hold themselves out for the purpose of propagating a political opinion or engaging in any other political activity,

"the President" means the President of Bangladesh elected under this Constitution or any person for the time being acting in that office,

"property" includes property of every description movable or immovable corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking,

"public notification" means a notification in the Bangladesh Gazette

"public officer" means person holding or acting in any office of emolument in the service of the Republic,

"the Republic" means the People's Republic of Bangladesh;

"Schedule" means a schedule to this Constitution,

"securities" includes stock,

"the service of the Republic" means any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic,

"session", in relation to Parliament, means the sittings of Parliament commencing when it first meets after the commencement of this institution or after a prorogation or dissolution of Parliament and running when Parliament is prorogued or dissolved,

"sitting" in relation to Parliament, means a period during which Parliament is sitting continuously without adjournment,

"the Speaker" means the person for the time being holding the office of Speaker pursuant to article 74;

"the State" includes Parliament, the Government and statutory public authorities,

"statutory public authority" means any authority, corporation or body or activities or the principal activities of which are authorised by any law, ordinance, order or instrument having the force of law in Bangladesh,

"sub-clause" means a sub-clause of the clause in which the expression occurs,

"the Supreme Court" means the Supreme Court of Bangladesh constituted by article 94;

"taxation" includes the imposition of any tax, rate, duty or impost, whether general, local or special, and "tax" shall be construed accordingly,

1) The General Clauses Act, 1897 shall apply in relation to—

(a) this Constitution as it applies in relation to an Act of Parliament,

(b) any enactment repealed by this Constitution, or which by virtue thereof becomes void or ceases to have effect, as it applies in relation to any enactment repealed by Act of Parliament

**153. Commencement, citation and authenticity**

(1) This Constitution may be cited as the Constitution of the People's Republic of Bangladesh and shall come into force on the sixteenth day of December, 1972, in this Constitution referred to as the commencement of this Constitution

(2) There shall be an authentic text of this Constitution in Bengali, and an authentic text of an authorised translation in English, both of which shall be certified as such by the Speaker of the Constituent Assembly

(3) A text certified in accordance with clause (2) shall be conclusive evidence of the provisions of this Constitution

Provided that in the event of conflict between the Bengali and the English text, the Bengali text shall prevail

**FIRST SCHEDULE**

(Article 47)

*Laws effective notwithstanding other provisions*

The State Acquisition and Tenancy Act, 1950 (E B Act XXVIII of 1951)

The Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (A P O No 1 of 1972)

The Government of Bangladesh (Services) Order, 1972 (P O No 9 of 1972)<sup>1</sup>

The Bangladesh Shipping Corporation Order, 1972 (P O No 10 of 1972)

The Bangladesh (Restoration of Evacuee Property) Order, 1972 (P O No 13 of 1972)

The Bangladesh Public Servants' (Retirement) Order, 1972 (P O No. 14 of 1972)<sup>2</sup>

The Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (P O No 16 of 1972)

The Bangladesh Banks (Nationalisation) Order, 1972 (P O No 26 of 1972)

The Bangladesh Industrial Enterprises (Nationalisation) Order, 1972 (P O No 27 of 1972)

The Bangladesh Inland Water Transport Corporation Order, 1972 (P O No 28 of 1972)

The Bangladesh (Vesting of Property and Assets) Order, 1972 (P O No 29 of 1972)

The Bangladesh Insurance (Emergency Provisions) Order, 1972 (P O No 30 of 1972)

The Bangladesh Consumer Supplies Corporation Order, 1972 (P O No 47 of 1972)<sup>3</sup>The Bangladesh Scheduled Offences (Special Tribunals) Order, 1972 (P O No 50 of 1972)<sup>4</sup>The Bangladesh Nationalised and Private Organisations (Regulation of Salary of Employees) Order, 1972 (P O No 54 of 1972)<sup>5</sup>The Bangladesh Jute Export Corporation Order, 1972 (P O No 57 of 1972)<sup>6</sup>

The Bangladesh Water and Power Development Boards Order, 1972 (P O No 59 of 1972)

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<sup>1</sup> Repealed by Ordinance No XLIV of 1975<sup>2</sup> Repealed by Ordinance No XXVI of 1973<sup>3</sup> Repealed by Act III of 1981<sup>4</sup> Repealed by Act XIV of 1974<sup>5</sup> Repealed by Ordinance No XL of 1977<sup>6</sup> Repealed by Ordinance XXX of 1985

The Government of Bangladesh (Services Screening) Order, 1972 (P/O No 67 of 1972)<sup>1</sup>

The Bangladesh Government Hats and Bazzars (Management) Order, 1972 (P O No 73 of 1972)<sup>2</sup>

The Bangladesh Government and Semi-autonomous Organisations (Regulation of Salary of Employees) Order, 1972 (P O No 79 of 1972)<sup>3</sup>

The Bangladesh Insurance (Nationalisation) Order, 1972 (P O No 95 of 1972)

The Bangladesh Land Holding (Limitation) Order, 1972 (P O No 98 of 1972)

The Bangladesh Biman Order, 1972 (P O No 126 of 1972)<sup>4</sup>

The Bangladesh Bank Order, 1972 (P O No 127 of 1972)

The Bangladesh Shilpa Run Sangstha Order, 1972 (P O No 128 of 1972)

The Bangladesh Shilpa Bank Order, 1972 (P O No 129 of 1972)

And all Presidential Orders and other existing law effecting amendments of the above-mentioned Act and Orders

## SECOND SCHEDULE

*[Omitted]*

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1 Repealed by Ordinance No XV of 1977

2 Repealed by Ordinance No LIX of 1975

3 Repealed by Ordinance No XLII of 1977

4 Repealed by Ordinance No XIX of 1977

**THIRD SCHEDULE**

(Article 148)

**OATHS AND AFFIRMATIONS**

1 The President—An oath (or affirmation) in the following form shall be administered by the Chief Justice—

"I, . . . , do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of President of Bangladesh according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Constitution

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will"

2 The Prime Minister and other Ministers, Ministers of State and Deputy Ministers—Oaths (or affirmations) in the following forms shall be administered by the President—

(a) Oath (or affirmation) of office,

"I, . . . , do solemnly swear (or Affirm) that I will faithfully discharge the duties of the office of Prime Minister (or as the case may be) according to law

That I will bear true faith and allegiance to Bangladesh,

That I will Preserve, protect and defend the Constitution

And That I will do right to all manner of people according to law, without fear of favour, affection or ill-will "

(b) Oath (or Affirmation) of secrecy,

"I, . . . , do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Prime Minister (or as the case may be) except as may be required for the due discharge of my duty as Prime Minister (or as the case may be) "

2A In Chief Adviser and Advisers—Oaths (or affirmations) in the following forms shall be administered by the President—

(a) Oath (or affirmation) of office "I, . . . do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of the Chief Adviser (or Adviser) of the Non-Party Care-taker Government, according to law, That I will bear true faith and allegiance to Bangladesh, That I will preserve, protect and defend the Constitution, That I will do right to all manner of people according to law, without fear or favour, affection or ill-will "

(b) Oath (or affirmation) of secrecy, "I, . . . do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Adviser

(or Adviser of the Non-party Care-taker Government, except as may be required for the due discharge of my duty as Chief Adviser (or Adviser) "

3 The Speaker—An Oath (or affirmation) in the following form shall be administered by the President—

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully discharge the duties of the Speaker of Parliament and (whenever I am called upon so to do) of the President, according to law,

That I will bear true faith and allegiance to Bangladesh,

That I will preserve, protect and defend the Constitution,

And that I will do right to all manner of People according to law, without fear or favour, affection or ill-will "

4 Deputy Speaker—An oath (or affirmation) in the following form shall be administered by the President—

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully discharge the duties of Deputy Speaker of Parliament and (whenever I am called upon so to do) of the Speaker, according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Constitution

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will

5 Member of Parliament—An oath (or affirmation) in the following form shall be administered by the Speaker—

"I, \_\_\_\_\_, having been elected a member of Parliament do solemnly swear (or affirm) that I will faithfully discharge the duties upon which I am about to enter according to law

That I will bear true faith and allegiance to Bangladesh

And that I will not allow my personal interest to influence the discharge of my duties as a member of Parliament "

6 Chief Justice or Judges - An oath (or Affirmation) in the following form shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge Appointed to a division, by the Chief Justice—

"I, \_\_\_\_\_, having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (or Affirm) that I will faithfully discharge the duties of my office according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Constitution and the laws of Bangladesh

And that I will do right to all manner of people according to law, without fear of favour, affection or ill-will "

7 Chief Election Commissioner or Election Commissioner—An oath (or Affirmation) in the following form shall be administered by the Chief Justice—

"I, ... .., having been appointed Chief Election Commissioner (or Election Commissioner), do solemnly swear (or Affirm) that I will faithfully discharge the duties of my office according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Constitution

And that I will not allow my personal interest to influence my official conduct or my official decisions."

8 Comptroller and Auditor-General.—An oath (or Affirmation) in the following form shall be administered by the Chief Justice—

"I, ... .., having been appointed Comptroller and Auditor-General do solemnly swear (or affirm) that I will faithfully discharge the duties of my office according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Constitution

And that I will not allow my personal interest to influence my official conduct or my official decisions "

9 Member of Public Service Commission —An oath (or Affirmation) in the following form shall be administered by the Chief Justice—

"I, . . . . ., having been appointed Chairman (or Member) of a Public Service Commission do solemnly swear (or Affirm) that I will faithfully discharge the duties of my office according to law

That I will bear true faith and allegiance to Bangladesh

That I will preserve, protect and defend the Commission

And That I will not allow my personal interest to influence my official conduct or my official decisions "

**FOURTH SCHEDULE**

(Article 150)

**TRANSITIONAL AND TEMPORARY PROVISIONS****1. Dissolution of Constituent Assembly**

Upon the commencement of this Constitution, the Constitution Assembly, having discharged its responsibility of framing a Constitution for the Republic, shall stand dissolved

**2. First elections**

(1) The First general election of members of Parliament shall be held as soon as possible after the commencement of this Constitution and for this purpose the electoral rolls prepared under the Bangladesh Electoral Rolls, Order 1972 (P O No 104 of 1972) shall be deemed to be the electoral rolls prepared in accordance with article 119

(2) For the purpose of the first general election of members of Parliament, the delimitation of constituencies made for the purpose of elections to constitute the erstwhile Provincial Assembly, and published in 1970, shall be deemed to be made under article 119, and the Election Commission shall, after incorporating such changes, as it may consider necessary, in the nomenclature of any constituency or any subdivision of than a included therein, publish, by public notification, the list of such constituencies

Provided that provision may be made by law to give effect to the provision relating to seats women members referred to in clause (3) of articles 65

**3. Provisions for maintaining continuity and interim arrangements**

(1) All laws made or purported to having been made in the period between the 26th day of March, 1971 and the commencement of this Constitution, all powers exercised and all things done during that period, under authority derived or purported to have been derived from the Proclamation of Independence or any law, are hereby ratified and confirmed and are declared to have been duly made, exercised and done according to law

(2) Until the day upon which Parliament first meets pursuant to the provisions of this Constitution, the executive and legislative powers of the Republic (including the power of the President, on the advice of the Prime Minister, to legislate by order) shall notwithstanding the repeal of the Provisional Constitution of Bangladesh Order, 1972, be exercised in all respects in the manner in which, immediately before the commencement of the Constitution, they have been exercised

(3) Any provision of this Constitution enabling or requiring Parliament to legislate shall, until the day upon which Parliament first meets as aforesaid, be construed as enabling the President of legislate by order, and any order made under this paragraph shall have effect as if the provisions thereof had been enacted by Parliament

**3A. Validation of certain Proclamations, etc.**

(1) The Proclamations of the 20th August, 1975, and 8th November, 1975, and Thurd Proclamation of the 29th November, 1976, and all other Proclamations and Orders amending or supplementing them, hereinafter in this paragraph collectively referred to as the said Proclamations and all Martial Law Regulations, Martial Law Orders and all other laws made during the period between the 15th day of August, 1975 and the date of revocation of the said Proclamations and withdrawal of Martial Law (both days inclusive), hereinafter in this paragraph referred to as the said period, shall be deemed to have been validly made and shall not be called in question in or before any Court or Tribunal on any ground whatsoever

(2) All orders made, act and things done, and actions and proceedings taken, or purported to have been made, done or taken, by the President or the Chief Martial Law Administrator or by any other person or authority during the said period, in exercise or purported exercise of the powers derived from any of the said Proclamations or any Martial Law Regulation or Martial Law Order or any other law, or in execution of or in compliance with any order made or sentence passed by any court or authority in the exercise or purported exercise of such powers, shall be deemed to have been validly made, done or taken and shall not be called in question in or before any court, or tribunal on any ground whatsoever

(3) No suit, prosecution or other legal proceeding shall lie in any court or tribunal against any person or authority for or on account of or in respect of any order made, act or thing done, or action or proceeding taken whether in the exercise or purported exercise of the powers referred to in subparagraph (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers

(4) All amendments, additions, modifications, substitutions and omissions made in this Constitution by the said Proclamations shall have effect as if such amendments, additions, modifications, substitutions and omissions were made in accordance with, and in compliance with the requirements of this Constitution

(5) Upon the revocation of the said Proclamations and the withdrawal of Martial Law this Constitution shall, subject to amendments, additions, modifications, substitutions and omissions as aforesaid, have effect and operate as if it had been in continuous operation.

(6) The revocation of the said Proclamations and the withdrawal of Martial Law shall not review or restore any right or privilege which was not existing at the time of such revocation and withdrawal

(7) All laws in force immediately before the revocation of the said Proclamations and withdrawal of Martial Law shall, subject to the Proclamation revoking the said Proclamations an withdrawing the Martial Law, continue in force until altered, amended or repealed by the competent authority.

(8) The General Clauses Act, 1897, shall apply to the said Proclamations and the Martial Law Regulations and Martial Law Orders made during the said

period and also to the revocation of the said Proclamations and the withdrawal of Martial Law and the repeal of the said Martial Law Regulations and Martial Law Orders as it applies to, and to the repeal of, an Act of Parliament as if the said Proclamations and the Proclamation revoking them and withdrawing the Martial Law and the Martial Law Regulations and Martial Law Orders were all Acts of Parliament

(9) In the event of any conflict, contradiction, discrepancy or inconsistency between the Bengali and the English text of the Constitution, in so far as it relates to any amendment, addition, modification, substitution or omission made in any of the texts or in both the texts by the said Proclamations, the English text shall prevail

(10) In this paragraph, 'law' includes Ordinances, rules, regulations, bye-law, orders, notifications and other instruments having the force of law

#### **4. President**

(1) The person holding office as President of Bangladesh immediately before the commencement of this Constitution shall hold office as President, as if elected to that office under this Constitution, until a person elected as President under article 48 enters upon office

Provided that the holding of office under this paragraph shall not be taken into account for the purposes of clause (2) of article 50

(2) The persons holding office as Speaker and Deputy Speaker of the Constituent Assembly immediately before the commencement of this Constitution shall, notwithstanding that Parliament has not yet been constituted, be deemed to hold office respectively as Speaker and Deputy Speaker until an election to each of those offices is made under clause (1) of article 74

#### **5. Prime Minister and other Ministers**

The person holding office as Prime Minister, immediately before the date of the commencement of this Constitution shall until his successor appointed under article 56 after the first general election held under this Constitution enters upon office, hold office as Prime Minister as if appointed to that office under this Constitution, and the persons holding office as Ministers immediately before that date shall continue to hold office as Ministers until the Prime Minister otherwise directs, and nothing in Article 56 shall prevent the appointment of other Ministers on the advice of the Prime Minister

#### **6. Judiciary**

(1) The person holding office as Chief Justice immediately before the date of the Commencement of this Constitution and every person who then held office as Judge of the High Court constituted by the Provisional Constitution of Bangladesh Order, 1972, shall as from that date hold office as if appointed under article 95 as Chief Justice or, as the case may be, as Judge

(2) The persons (other than the Chief Justice) holding office as Judges pursuant to sub-paragraph (1) of this paragraph shall at the commencement of

this Constitution be deemed to have been appointed to the High Court Division, and appointments to the Appellate Division shall be made in accordance with article 94

(3) All legal proceedings pending in the High Court immediately before the commencement of this Constitution (other than those referred to in subparagraph (4) of this paragraph) shall be transferred to and be deemed to be pending before the High Court Division for determination, and any judgement or order of the High Court delivered or made before the commencement of this Constitution shall have the same force and effect as if it had been delivered or made by the High Court Division

(4) All legal proceedings pending before the Appellate Division of the High Court immediately before the commencement of this Constitution shall be transferred to the Appellate Division for determination and any judgment or order of the former division delivered or made before the commencement of this Constitution shall have the same force and effect as if it had been delivered or made by the Appellate Division

(5) Subject to the provisions of this Constitution and of any other law—

(a) all original, appellate and other jurisdiction which was vested in the High Court constituted by the Provisional Constitution of Bangladesh Order, 1972 (other than jurisdiction vested in the Appellate Division of that Court) shall from the commencement of this constitution, vest in and be exercised by the High Court Division,

(b) all civil, criminal and revenue courts and tribunals exercising jurisdiction and functions immediately before the commencement of this Constitution shall continue to exercise their respective jurisdictions and functions, and all persons holding office in such courts and tribunals shall continue to hold their respective offices

(6) The Provisions of Chapter II of Part VI (which relate to subordinate courts) shall be implemented as soon as is practicable, and until such implementation the matters provided for in that Chapter shall (subject to any the provision made by law) be regulated in the manner in which they were regulated immediately before the commencement of this Constitution

(7) Nothing in this paragraph shall after the operation of any existing law relating to the abatement of proceedings

#### 6A. Provisions as to existing Judges and pending proceedings

(1) The person holding office of Chief Justice of Bangladesh immediately before the commencement of the Second Proclamation (Seventh Amendment) Order, 1976 (hereinafter referred to as the said Order), and every person who then held office as Judge or Additional Judge of the Appellate Division of the Supreme Court shall as from such commencement hold office as Chief Justice, Judge or Additional Judge of the Supreme Court, as the case may be on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement

(2) A person holding office as Judge or Additional Judge of the High Court Division of the Supreme Court immediately before the commencement of the said Order shall as from such commencement hold office as Judge or Additional Judge of the High Court as the case may be, on the same terms and conditions as the remuneration and other privileges as were applicable to him immediately before such commencement

(3) All legal proceedings pending before the Appellate Division of the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to and be deemed to be pending before, the Supreme Court for determination, and any judgment, or order of the Appellate Division of the Supreme Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Supreme Court

(4) All legal proceedings pending before the High Court Division of the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the Supreme court for determination, and any judgement or order of the High Court Division delivered or made before such commencement shall have the same force and effect as if had been delivered or made by the High Court

(5) Subject to the other provisions of this Constitution, the Supreme Court shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the Appellate Division of the Supreme Court, and references in any law, legal instrument or other documents to the Appellate Division of the Supreme Court shall, unless the context otherwise requires, be construed as references to the Supreme Court

(6) Subject to the other provisions of this Constitution, the High Court shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the High Court Division of the Supreme Court, and references in any law, legal instrument or other document to the High Court Division of the Supreme Court shall, unless the context otherwise requires, be construed as references to the High Court

**6B. Provisions as to Judges of the Supreme Court and High Court existing before the Second Proclamation Order No 1 of 1977 proceedings pending before commencement of that Order, etc —**

(1) A person holding office as Chief Justice or Judge or Additional Judge of the Supreme Court or Chief Justice or Judge or Additional Judge of the High Court immediately before the Commencement of the Second Proclamation (Tenth Amendment) Order, 1977 (hereinafter referred to as the said Order), shall, if he has attained the age of sixty-two years on the date of such commencement, stand retired on that date

(2) A person holding office as Chief Justice or Judge or Additional Judge of the Supreme Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of

such commencement, as from such commencement hold office as Chief Justice of Bangladesh or Judge or Additional Judge of the Appellate Division as the case may be, on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement

(3) The person holding office as Chief Justice of the High Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of such commencement, as from such commencement hold office as Judge of the High Court Division on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement

(4) A person holding office as Judge or Additional Judge of the High Court immediately before the commencement of the said Order shall, if he has not attained the age of sixty-two years on the date of such commencement, as from such commencement hold office as Judge or Additional Judge of the High Court Division, as the case may be, on the same terms and conditions as to remuneration and other privileges as were applicable to him immediately before such commencement

(5) All legal proceedings pending before the Supreme Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the Appellate Division for determination, and any judgment or order of the Supreme Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the Appellate Division

(6) All legal proceedings pending before the High Court immediately before the commencement of the said Order shall on such commencement stand transferred to, and be deemed to be pending before, the High Court Division for determination, and any judgment or order of the High Court delivered or made before such commencement shall have the same force and effect as if it had been delivered or made by the High Court Division

(7) Subject to the other provisions of this Constitution, the Appellate Division shall have the same functions, jurisdiction and powers as were, immediately before the commencement of the said Order, exercisable by the Supreme Court, and references in any law, legal instrument or other document to the Supreme Court shall, unless the context otherwise requires, be construed as references to the Appellate Division

(8) Subject to the other provisions of this Constitution, the High Court Division shall have the same functions, jurisdiction and powers as were, immediately before the commencement of this said Order, exercisable by the High Court, and references in any law, legal instrument or other document to the High Court shall, unless the context otherwise requires, be construed as references to the High Court Division

(9) The person holding office as Advocate-General immediately before the commencement of the said Order shall on such commencement cease to hold office

**7. Interim rights of appeal**

An Appeal to the Appellate Division of the Supreme Court shall lie, notwithstanding any limitation as to time, against any judgment, decree, order or sentence delivered, issued or pronounced since the 1st day of March, 1971 by any High Court of Bangladesh (Amendment) Order, 1972 (P O No 91 of 1972) functioning in the territory of Bangladesh.

Provided that article 103 shall apply in respect of any such appeal as it applies in respect of appeals from the High Court Division

Provided further that no appeal under this article shall be lodged after the expiration of the period of ninety days from the commencement of this Constitution

**8. Election Commission**

(1) The Election Commission existing immediately before the date of commencement of this Constitution, shall, as from that date be deemed to be the Election Commission established by this Constitution

(2) The person holding office as Chief Election Commissioner, and every person holding office as Election Commissioner, immediately before the date of the commencement of this Constitution, shall, as from that date, hold office as if appointed to such office under this Constitution

**9. Public Service Commission**

(1) The Public Service Commissions existing immediately before the date of the commencement of this Constitution, shall as from that date, be deemed to be Public Service Commissions established under this Constitution

(2) Every person holding office as chairman or other member of a Public Service Commission immediately before the date of the commencement of this Constitution, shall, as from that date hold office as if appointed to that office under this Constitution

**10. Public service**

(1) Subject to this Constitution and to any other law—

(a) any person who immediately before the commencement of this Constitution was in the service of the Republic shall continue in that service on the same terms and conditions as were applicable to him immediately before such commencement,

(b) all authorities and all officers, judicial, executive and ministerial throughout Bangladesh exercising functions immediately before the commencement of this Constitution, shall, as from such commencement, continue to exercise their respective functions

(2) Nothing in sub-paragraph (1) of this paragraph shall—

(a) derogate from the continued operation of the Government of Bangladesh (Services) Order, 1972 (P O No 9 of 1972), or the Government of Bangladesh (Services Screening) Order, 1972 (P O No 67 of 1972),

(b) prevent the making of any law varying or revoking the conditions of service (including remuneration, leave, person rights and rights relating to disciplinary matters) of persons employed at any time before the commencement of this Constitution or of person continuing in the service of the Republic under the provisions of the paragraph.

#### **11. Oaths for continuance in office**

Any person who, under this Schedule, is continued in an office in respect of which a form of oath or affirmation is set out in the Third Schedule shall, as soon as practicable after the commencement of this Constitution, make and subscribe before the appropriate person an oath or affirmation in that form.

#### **13. Taxation**

All taxes and fees imposed under any law in force in Bangladesh immediately before the commencement of this Constitution shall continue to be imposed but may be varied or abolished by law

#### **14. Interim financial arrangements**

Unless Parliament otherwise resolves, the Provisions of articles 87, 89, 90 and 91 of this Constitution shall not have effect in respect of the financial year current at the commencement of this Constitution, and expenditure defrayed during that year out of the Consolidated Fund or the Public Account of the Republic shall be deemed to have been validly incurred:

Provided that the President shall, as soon as is practicable, cause a statement of all such expenditure, authenticated by his signature, to be laid before Parliament

#### **15. Audit of past accounts**

The powers of the Comptroller and Auditor-General under this Constitution shall apply in respect of all accounts relating to the financial year current at the commencement of this condition and to earlier years and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the President who shall cause them to be laid before Parliament

#### **16. Property, assets, rights, liabilities and obligations of the Government**

(1) All property, assets and rights which immediately before the commencement of this Constitution were vested in the Government of the People's Republic of Bangladesh or any person or authority on its behalf shall vest in the Republic

(2) All liabilities and obligations of the Government of the Republic as they existed immediately before the commencement of this Constitution shall continue to be the liabilities and obligations of the Republic

(3) No liability or obligation of any other government which at any time functioned in the territory of Bangladesh is or shall be a liability or obligation of the Republic unless it is expressly accepted by the Government of the Republic

**17. Adaptation of laws and removal of difficulties**

(1) For the purpose of bringing the provisions of any law in force in Bangladesh into conformity with this Constitution the President may, within the period of two years from the commencement of this Constitution, by order, amend or suspend the operation of such provisions and any order so made may have retrospective effect. Adaptation of laws and removal of difficulties

(2) The President may, for the purpose of removing any difficulties in relation to the transition from the provisional constitutional arrangements existing before the commencement of this Constitution to the arrangements under this Constitution by order, direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem necessary or expedient.

Provided that no such order shall be made after the first meeting of the Parliament constituted under this Constitution.

(3) Every order made under this paragraph shall have effect notwithstanding any other provision of this Constitution, shall be laid before Parliament, and may be amended or revoked by Act of Parliament.

**18. Ratification and confirmation of Proclamations, etc.**

All Proclamations, Proclamation Orders, Martial Law Regulations, Martial Law Orders and other laws made during the period between the 15th August, 1975, and the 9th April, 1979 (both days inclusive), all amendments, additions, modifications, substitutions and omissions made in this Constitution during the said period by any such Proclamation, all orders made, acts and things done, and actions and proceedings taken, or purported to have been made, done or taken, by any person or authority during the said period in exercise of the powers derived or purported to have been derived from any such Proclamation, Martial Law Regulation, Martial Law Order or any other law, or in execution of or in compliance with any order made or sentence passed by any court, tribunal or authority in the exercise or purported exercise of such powers, are hereby ratified and confirmed and are declared to have been validly made, done or taken and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever.

**19. Ratification and confirmation of the Proclamation of the 24th March, 1982, etc.**

(1) The Proclamation of the 24th March, 1982 hereinafter in this paragraph referred to as the said Proclamation, and all other Proclamations, Proclamation Order, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders, Martial Law Instructions, Ordinances and all other laws made during the period between the 24th March, 1982, and the date of commencement of the Constitution (Seventh Amendment) Act, 1986 (Act 1 of 1986) (both days inclusive), hereinafter in this paragraph referred to

as the said period, are hereby ratified and confirmed and declared to have been validly made and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever

(2) All orders made, acts and things done, and actions and proceedings taken, or purported to have been made, done or taken, by the President or the Chief Martial Law Administrator or by any other person or authority during the said period, in exercise or purported exercise of the powers derived from the said Proclamation or from any other Proclamation, Proclamation Order, Chief martial Law Administrator's Order, Martial Law Regulation, Martial Law Order, Martial Law Instruction, Ordinance or any other Law, or in execution of or in compliance with any order made or sentence passed by any court, tribunal or authority in the exercise or purported exercise of such powers, shall be deemed to have been validly made, done or taken and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever

(3) No suit, prosecution or other legal proceedings shall lie in any court or tribunal against any person or authority for or on account of or in respect of any order made, act or thing done, or action or proceedings taken whether in the exercise or purported exercise of the powers referred to in subparagraph (2) or in exercise or purported exercise or such powers

(4) All appointments made during the said period to any office mentioned in the Third Schedule shall be deemed to have been validly made and shall not be called in question in or before any court, tribunal or authority on any ground whatsoever, and any person appointed under this said Proclamation to any such office during the said period and holding such office immediately before the date of commencement of the Constitution (Seventh Amendment) Act, 1986 (Act I of 1986), hereinafter in this paragraph referred to as the said Act shall, as from that date hold such office as if appointed to that office under this Constitution, and shall, as soon as practicable after that date, make and subscribe before the appropriate person and oath or affirmation in the form set out in the Third Schedule

(5) All appointments made by the Chief Martial law Administrator during the said period to any office or post which is continuing after the date of commencement of the said Act shall, as from that date, be deemed to be appointments made by the President

(6) All Ordinances and other laws in force immediately before the date of commencement of the said Act shall, subject to the Proclamation revoking the said Proclamation and withdrawing the Martial Law, continue in force until altered, amended or repealed by competent authority

(7) Upon the revocation of the said Proclamation and withdrawal of martial Law, this Constitution shall stand fully revived and restored and shall, subject to the provisions of this paragraph, have effect and operate as if it had never been suspended

(8) The revocation of the said Proclamation and withdrawal of Martial Law shall not revive or restore any right or privilege which was not existing at the time of such revocation and withdrawal

(9) The General Clauses Act, 1987, shall apply to the said Proclamation, and all other Proclamations, Proclamation Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions made during the said period and also to the revocation of the said Proclamation and other Proclamations and the repeal of the said Proclamation Orders, Chief Martial Law Administrator's Order, Martial Law Regulations, Martial Law Orders and Martial Law Instructions as it applies to, and to the repeal of, an Act of Parliament Orders, Chief Martial Law Administrator's Orders, Martial Law Regulations, Martial Law Orders and Martial Law Instructions and the Proclamation revoking the said Proclamation were all Acts of Parliament

(10) In this paragraph, "law" includes rules, regulations, bye-laws, orders, notifications and other instruments having the force of law

## **21. Ratification and confirmation of the appointment of Vice-President, etc.**

(1) The appointment of, and the administration of oath to the Chief Justice of Bangladesh as Vice-President on the 21st day of Agrahayan, 1397 B S corresponding to the 6th day of December, 1990 and the resignation tendered to him by the then President and all powers exercised, all laws and Ordinances made and all orders made, acts and things done, and actions taken, or purported to have been made, done or taken by the said Vice President acting as President during the period between the 21st day of Agrahayan, 1397 B S corresponding to the 6th day of December, 1990 and the date of commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No XXIV of 1991) (both days inclusive) or till the new President elected under article 48(I) of the Constitution has entered upon his office (whichever is later), are hereby ratified and confirmed and declared to have been validly made, administered, tendered, exercised, done and taken according to law

(2) The said Vice President shall, after the commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No XXIV of 1991), and after the new President elected under this Constitution has entered upon his office, be eligible to resume the duties and responsibilities of the Chief Justice of Bangladesh and the period between the 21st day of Agrahayan, 1397 B S corresponding to the 6th day of December, 1990 and the date of which he resumes such duties and responsibilities shall be deemed to be the period of actual service within the meaning of section 2(a) of the Supreme Court Judges (Leave, Pension and Privileges) Ordinance, 1982 (Ordinance No XX of 1982)

22 Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of the Constitution (Twelfth Amendment) Act, 1991 (Act No XXVIII of 1991) shall be deemed to have been duly elected and constituted in accordance with the Constitution and Law and shall continue to function under the provisions of article 72 of the Constitution

# 5

## CONSTITUTION OF BELGIUM

{Adopted in 1970}

### *TITLE I*

### **FEDERATION, COMPONENTS, TERRITORY**

#### **1. Federal State**

Belgium is a Federal State made up of Communities and Regions

#### **. Communities**

Belgium is made up of three Communities the French Community, the Flemish Community, and the German-speaking Community

#### **2. Regions**

Belgium is made up of three Regions the Walloon Region, the Flemish Region, and the Brussels Region

#### **3. Linguistic Regions**

(1) Belgium has four linguistic regions the French-speaking Region, the Dutch-speaking Region, the bilingual Region of Brussels-Capital, and the German-speaking Region

(2) Each commune of the Kingdom is part of one of these linguistic regions

(3) The limits of the four linguistic regions can only be changed or modified by a law adopted by majority vote in each linguistic group in each House, on the condition that the majority of the members of each group are

gathered together and from the moment that the total of affirmative votes given by the two linguistic groups is equal to at least two thirds of the votes expressed

### **5. Provinces**

(1) The Walloon Region is made up of the following provinces Walloon Brabant, Hainaut, Liege, Luxemburg, and Namur The Flemish Region is made up of the following provinces Antwerp, Flemish Brabant, West Flanders, East Flanders, and Limburg

(2) By law, the territory can be divided into a greater number of provinces, if necessary

(3) A law can shield certain territories whose limits it fixes, from division into provinces, make them depend directly on the federal executive power, and make them subject to a statute of their own This law must be adopted by majority vote as provided for in Article 4, last paragraph

### **6. Provincial Sub-Divisions**

*The provincial sub-divisions can only be established by law*

### **7. Delimitation**

The delimitation of the State, the provinces, and the communes can only be changed or modified by law

## ***TITLE II***

## **BELGIANS AND THEIR RIGHTS**

### **8. Citizenship**

(1) The title of Belgian is acquired, preserved, and lost according to rules determined by civil law

(2) The Constitution and the other laws relative to political rights, determine which are, apart from this title, the necessary conditions for the exercise of these rights

### **9. Naturalization**

*Naturalization is accorded by the federal legislative power*

### **10. Equality**

(1) There are no class distinctions in the State

(2) Belgians are equal before the law, they are the only ones eligible for civil and military service, but for the exceptions that could be made by law for special cases

### **11. Non-Discrimination, Minorities**

Enjoyment of the rights and freedoms recognized for Belgians should be ensured without discrimination To this end, laws and decrees guarantee notably the rights and freedoms of ideological and philosophical minorities

**12. Personal Liberty**

(1) Individual freedom is guaranteed

(2) No one can be prosecuted except in the cases provided for by law, and in the form prescribed by law.

(3) Except in the case of *flagrante delicto*, no one can be arrested except by a justifiable judge's order, that must be served at the moment of arrest, or at the latest within twenty-four hours

**13. Lawful Judge**

No one can be separated, unwillingly, from the judge that the law has assigned to him

**14. Legal Punishment**

No punishment can be made or given except in pursuance of the law

**15. Home**

The domicile is inviolable, no visit to the individual's residence can take place except in the cases provided for by law and in the form prescribed by law

**16. Property**

No one can be deprived of his property except in the case of expropriation for a public purpose, in the cases and manner established by law, and in return for a fair compensation paid beforehand

**17. No Confiscation**

Punishment by confiscation of assets cannot be made

**18. Capital Punishment**

The death penalty is abolished, it cannot be brought back into force

**19. Freedom of Expression**

Freedom of worship, public practice of the latter, as well as freedom to demonstrate one's opinions on all matters, are guaranteed, except for the repression of offenses committed when using this freedom

**20. No Forced Religion**

No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion, nor to observe the days of rest

**21. Church Competencies, Civil Wedding**

(1) The State does not have the right to intervene either in the nomination or in the installation of ministers of any religion whatsoever, nor to forbid these ministers from corresponding with their superiors, from publishing their acts, except, in the latter case, taking into consideration normal responsibilities in matters of press and publication

(2) A civil wedding should always precede nuptial benediction except in cases established by law, should this be necessary

**22. Privacy**

(1) Everyone has the right to the respect of his private and family life, except in the cases and conditions determined by law

(2) The laws, decrees, and rulings alluded to in Article 134 guarantee the protection of this right

**23. Dignity**

(1) Everyone has the right to lead a life in conformity with human dignity

(2) To this end, the laws, decrees, and rulings alluded to in Article 134 guarantee, taking into account corresponding obligations, economic, social, and cultural rights, and determine the conditions for exercising them

(3) These rights include notably

1) the right to employment and to the free choice of a professional activity in the framework of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation,

2) the right to social security, to health care and to social, medical, and legal aid,

3) the right to have decent accommodation,

4) the right to enjoy the protection of a healthy environment,

5) the right to enjoy cultural and social fulfillment

**24. Education**

(1 1) Education is free, any preventative measure is forbidden, the repression of offenses is only governed law or decree

(1 2) The Community offers free choice to parents

(1 3) The Community organizes neutral education. Neutrality implies notably the respect of the philosophical, ideological, or religious conceptions of parents and pupils

(1 4) The schools organized by the public authorities offer, until the end of mandatory schooling, the choice between the teaching of one of the recognized religions and non-denominational moral teaching

(2) If a Community, in its capacity as an organizing authority, wishes to delegate competency to one or several autonomous bodies, it can only do so by decree adopted by a two-third majority vote

(3 1) Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of mandatory schooling

(3 2) All pupils of school age have the right to moral or religious education at the Community's expense

(4) All pupils or students, parents, teaching staff, or institutions are equal before the law or decree. The law and decree take into account objective

differences, notably the characteristics of each organizing authority, that justify appropriate treatment

(5) The organization, the recognition and the subsidizing of education by the Community are regulated by law or decree

#### **25. Press**

(1) The press is free; censorship can never be established; security from authors, publishers, or printers cannot be demanded

(2) When the author is known and resident in Belgium, neither the publisher, nor the printer, nor the distributor can be prosecuted

#### **26. Assembly**

(1) Belgians have the right to gather peaceably and without arms, in conformity with the laws that regulate the exercise of this right, without submitting it to prior authorization

(2) This provision does not apply to open air meetings, which are entirely subject to police regulations

#### **27. Association**

Belgians have the right to enter into association or partnership, this right cannot be liable to any preventative measures

#### **28. Petition**

(1) Everyone has the right to address petitions signed by one or more persons to the public authorities

(2) Constituted bodies are alone able to address petitions in a collective name

#### **29. Secrecy of Letters**

(1) The confidentiality of letters is inviolable

(2) The law determines which nominated representatives can violate the confidentiality of letters entrusted to the postal service

#### **30. Choice of Language**

The use of languages current in Belgium is optional, only the law can rule on this matter, and only for acts of the public authorities and for legal matters

#### **31. Liability of Civil Servants**

No prior authorization is necessary to take legal action against civil servants because of their public office, except with regard to what has been ruled on concerning ministers and members of the Community and Regional governments

#### **32. Information**

Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees, or rulings referred to in Article 134

### **TITLE III POWERS**

#### **CHAPTER 0 GENERAL PROVISIONS**

##### **33. Sovereignty, Rule of Law**

- (1) All power emanates from the Nation
- (2) The power is exerted in the manner established by the Constitution

##### **34. Transfer of Sovereignty**

The exercising of determined power can be attributed by a treaty or by a law to international public institutions

##### **35. Authorities**

(1) The federal authority only has power in the matters that are formally attributed to it by the Constitution and the laws carried in pursuance of the Constitution itself

(2) The Communities and the Regions, each in its own field of concern, have power for the other matters, under the conditions and in the terms stipulated by law. This law must be adopted by majority vote as provided for in Article 4, last paragraph

(3) The law referred to in paragraph (2) determines the date on which this Article comes into force. This date cannot precede the date of the implementation of the new Article to be inserted in Title III, which determines the exclusive powers of the federal authority

##### **36. Legislative Power**

The federal legislative power is exerted collectively by the King, the House of Representatives, and the Senate

##### **37. Executive Power**

The federal executive power, as stipulated by the Constitution, belongs to the King

##### **38. Local Autonomy**

Each Community has assignments which are recognized by the Constitution or by the laws carried in pursuance of it

##### **39. Regional Autonomy**

The law attributes to the Regional Bodies that it creates and that are made up of elected representatives, the power to manage the matters that it determines, with the exception of those referred to in Articles 30 and 127 to 129, within the jurisdiction and according to the manner established by the law. The latter must be adopted by majority vote as provided for in Article 4, last paragraph

##### **40. Adjudicating Power**

- (1) Judiciary power is exerted by the courts and tribunals

(2) Rulings and court decisions are carried out in the name of the King

#### 41. Decentralization, Adjournment

Interests which are exclusively of a communal or provincial nature are ruled on by communal or provincial councils, according to the principles established by the Constitution. The King can adjourn the Houses. However, the adjournment cannot exceed the period of one month, nor be renewed in the same session without the consent of the Houses

### CHAPTER I

### THE FEDERAL HOUSES

#### [Section 0—General Provisions]

#### 42. Representation

The members of the two Houses represent the Nation, and not only those who elected them

#### 43. Linguistic Groups

(1) For cases determined by the Constitution, the elected members of each House are divided into a French linguistic group and a Dutch linguistic group, in the manner determined by law

(2) The senators referred to in Article 67 (1)(2,4,7) make up the French linguistic group of the Senate. The senators referred to in Article 67 (1)(1,3,6), make up the Dutch linguistic group of the Senate

#### 44. Sessions

(1) The Houses meet by right each year on the second Tuesday of October, unless they have been called together prior to this by the King

(2) The Houses must meet each year for at least forty days

(3) The King pronounces the closing of the session

(4) The King has the right to convoke the Houses to an extraordinary meeting

#### 45. Adjournment

The King can adjourn the Houses. However, the adjournment cannot exceed the period of one month, nor be renewed in the same session without the consent of the Houses

#### 46. Reasons for Dissolution

(1) The King has only the right to dissolve the House of Representatives if the latter, with the absolute majority of its members

1) either rejects a motion of confidence in the federal Government and does not propose to the King, within three days from the day of the rejection of the motion, the nomination of a successor to the Prime Minister,

2) or adopts a motion of disapproval with regard to the federal Government and does not simultaneously propose to the King the nomination of a successor to the Prime Minister

(2) The motions of confidence and disapproval can only be voted on after a delay of forty-eight hours after the introduction of the motion

(3) Moreover, the King may, in the event of the resignation of the federal Government, dissolve the House of Representatives after having received its agreement expressed by the absolute majority of its members

(4) The dissolution of the House of Representatives entails the dissolution of the Senate

(5) The act of dissolution involves the convoking of the electorate within forty days and of the Houses within two months

#### **47. Publicity**

(1) The sessions of the Houses are public

(2) Nevertheless, each House can meet in a secret committee, at the request of its President or of ten members

(3) It can decide afterwards, by absolute majority, if a session on the same subject has to be held again in public

#### **48. Self-Organization**

Each House controls the powers of its members and judges any dispute that can be raised on this matter.

#### **49. Horizontal Incompatibility**

It is not possible to be a member of both Houses at the same time

#### **50. Ministerial Incompatibility**

Any member of one of the two Houses, appointed by the King as a minister and who accepts this nomination, ceases to sit in the House and takes up his mandate again when the King has put an end to his functions as a Minister. The law provides for the terms of his replacement in the House concerned

#### **51. Governmental Incompatibility**

Any member of either of the two Houses, appointed by the federal Government to any salaried function other than that of Minister and who accepts the appointment, immediately ceases to sit in the House and only takes his functions up again by virtue of a new election

#### **52. President**

At each session, each of the Houses appoints its President, its Vice-Presidents, and forms its committee

#### **53. Majority, Quorum**

(1) Any resolution is made by absolute majority of votes, except with regard to what is established by the regulations of the Houses with regard to elections and presentations

(2) If the votes are divided, the proposal submitted for discussion is rejected

(3) Neither of the two Houses can take a resolution until the majority of its members are in session

#### **54. Group Veto, Alarm-Bell Procedure**

(1) With the exception of budgets and laws requiring a special majority, a justified motion, signed by at least three-quarters of the members of one of the linguistic groups and introduced following the introduction of the report and prior to the final vote in a public session, can declare that the provisions of a draft bill or of a motion are of a nature to gravely damage relations between the Communities

(2) In this case, the parliamentary procedure is suspended and the motion referred to the Council of Ministers which, within thirty days, gives its justified recommendations on the motion and invites the implicated House to express its opinion on these recommendations or on the draft bill or motion that has been revised if need be

(3) This procedure can only be applied once by the members of a linguistic group with regard to the same bill or motion

#### **55. Voting, Ballot**

Votes are given by rising or remaining seated or by call-over, most of the laws are voted by call-over. The election and presentation of candidates are carried out by secret ballot

#### **56. Enquiries**

Each House has the right to hold an enquiry

#### **57. Petitions**

It is forbidden to present petitions to the Houses in person. Each House has the right to send back to the Ministers the petitions that are addressed to it. The Ministers are obliged to give explanations about their content, each time that the House so requires

#### **58. Indemnity**

No member of either of the two Houses can be prosecuted or pursued with regard to opinions and votes given by him in the exercise of his duties

#### **59. Immunity**

(1) No member of either of the two Houses can, during the duration of a session, be arrested or prosecuted for repression, except with the authorization of the House of which he is a member, except in cases of *flagrante delicto*

(2) No imprisonment for debt can be undertaken against a member of either of the two Houses during a session, except with the same authorization

(3) The detention of or a lawsuit against a member of either of the two Houses is suspended during a session and for its entire duration, if the House so requires

**60. Regulations**

Each House determines, by its regulations, the way in which it exercises its duties

**Section I—The House of Representatives****61. Direct Elections, Electoral Rights**

(1) The members of the House of Representatives are elected directly by citizens who have completed the age of eighteen and who do not fall within the categories of exclusion stipulated by law

(2) Each elector has the right to only one vote

**62. Constituencies**

(1) The establishing of the constituencies or electoral colleges is governed by law

(2) Elections are carried out by the system of proportional representation that the law determines

(3) The ballot is obligatory and secret. It takes place at the commune, except in the cases determined by law

**63. Seats**

(1) The House of Representatives is made up of one hundred and fifty members

(2 1) Each electoral circumscription has as many seats as the number of the members of its population contains a multiple of the federal divisor, obtained by dividing the number of the population of the Kingdom by one hundred and fifty

(2 2) The remaining seats are attributed to the electoral circumscriptions which have the greatest surplus of population not yet represented

(3 1) The sharing of the members of the House of Representatives among the electoral circumscriptions is allocated to the population by the King

(3 2) The size of the population of each electoral circumscription is determined every ten years by a census or by any other means defined by law. The King publishes the results within a period of six months

(3 3) During the three months of this publication, the King determines the number of seats attributed to each electoral circumscription

(3 4) The new distribution is applied as of the following general election

(4) The law determines the electoral circumscriptions, it also determines the conditions required to be an elector as well as those for the carrying out of electoral operations

**64. Eligibility**

- (1) To be eligible, one must:
  - 1) be Belgian,
  - 2) enjoy civil and political rights,
  - 3) have completed the age of twenty-one,
  - 4) be legally resident in Belgium
- (2) No other condition of eligibility can be required

**65. Term**

- (1) The members of the House of Representatives are elected for four years
- (2) The House is renewed every four years

**66. Remuneration**

- (1) Each member of the House of Representatives benefits from an annual indemnity of twelve thousand francs
- (2) He also has the right to free travel on all the means of communication operated or contracted out by the State
- (3) The law determines the means of transport that the representatives can use free of charge apart from those mentioned above
- (4) An annual indemnity to be deducted from the allocation destined to cover the expenditure of the House of Representatives can be attributed to the President of this assembly
- (5) The House determines the amount of the deductions that can be applied to the indemnity by way of a contribution to the pension funds that it judges necessary to establish

**Section II--The Senate****67. Seats**

- (1) Without prejudice to Article 72, the Senate is made up of seventy-one senators, of whom:
  - 1) twenty-five senators elected in conformity with Article 61, by the Dutch electoral college,
  - 2) fifteen senators elected in conformity with Article 61, by the French electoral college,
  - 3) ten senators appointed by and within the Council of the Flemish Community, named the Flemish Council;
  - 4) ten senators appointed by and within the Council of the French Community;
  - 5) one senator appointed by and within the Council of the German-speaking Community,
  - 6) six senators appointed by the senators referred to in 1) and 3);
  - 7) four senators appointed by the senators referred to in 2) and 4)

(2 1) At least one of the senators referred to in paragraph (1)(1,3,6) is to be legally resident, on the day of his election, in the bilingual Region of Brussels-Capital

(2 2) At least six of the senators referred to in Paragraph (1)(2,4,7) are to be legally resident, on the day of their election, in the bilingual Region of Brussels-Capital If four or fewer of the senators referred to in paragraph (1)(2) are not legally resident, on the day of their election, in the bilingual Region of Brussels-Capital, at least two of the senators referred to in paragraph (1)(4) must be legally resident, on the day of their election, in the bilingual Region of Brussels-Capital

#### **68. Group Balance**

(1 1) The total number of senators referred to in Article 67 (1)(1,2,3,4,6,7) is shared within each linguistic group on the basis of the electoral figure of the lists obtained at the moment of the election of the senators referred to in Article 67 (1)(1,2) according to the system of proportional representation that is determined by law

(1 2) For the designation of the senators referred to in Article 67 (1)(3,4), only the lists can be taken into consideration on which at least one senator referred to in Article 67 (1)(1,2) is elected and from the moment that a sufficient number of members elected on this list sit, according to the case, on the Council of the Flemish Community or the Council of the French Community

(1 3) For the designation of the senators referred to in Article 67 (1)(6,7) only the lists can be taken into consideration on which at least one senator referred to in Article 67 (1)(1,2) is elected

(2) For the election of the senators referred to in Article 67 (1)(1,2), the ballot is obligatory and secret Young takes place at the commune, except for cases determined by law

(3 1) For the election of senators referred to in Article 67 (1)(1,2), the law determines the electoral circumscriptions and the composition of the electoral colleges, it also determines the conditions which must be met in order to be an elector, as well as those for the carrying out of electoral operations

(3 2) The law determines the designation of the senators referred to in Article 67 (1)(3,5) with the exception of the terms stipulated by a law adopted by the majority provided for in Article 4, last paragraph, which are determined by decree by the Community Councils, each one for matters of its concern This decree must be adopted by a two-third majority of the votes expressed, on condition that the majority of the members of the Council concerned are present

(3 3) The senator referred to in Article 67 (1)(5) is appointed by the Council of the German-speaking Community with absolute majority of the votes expressed

(3 4) The law determines the appointment of the senators referred to in Article 67 (1)(6,7)

**69. Eligibility**

In order to be elected or appointed as a senator one must

- 1) be Belgian,
- 2) enjoy civil and political rights,
- 3) have completed the age of twenty-one,
- 4) be legally resident in Belgium

**70. Term**

(1) The senators referred to in Article 67 (1)(1,2) are elected for four years. The senators referred to in Article 67 (1)(6,7) are appointed for four years. The Senate is entirely renewed every four years.

(2) The election of the senators referred to in Article 67 (1)(1,2) coincides with the election for the House of Representatives.

**71. Compensation**

(1) Senators do not receive a salary.

(2) They do, however, have the right to be compensated for any disbursement; this compensation is fixed at four thousand francs per year.

(3) They also have the right to free travel on all the means of communication operated or contracted out by the State.

(4) The law determines the means of transport that they can use free of charge apart from those mentioned above.

**72. King's Descendants**

The King's children or, in the absence of children, the Belgian descendants of the branch of the royal family called on to reign, are senators by right at the age of eighteen. They are only entitled to a seat and vote at the age of twenty-one. They are not taken into account for the determination of the quorum of attendance.

**73. Sessions**

Any assembly of the Senate that takes place outside the time of the session of the House of Representatives, is automatically void.

**CHAPTER II****FEDERAL LEGISLATION****74. Competencies**

Notwithstanding Article 36, federal legislative power is jointly exercised by the King and by the House of Representatives for

- 1) the granting of naturalization,
- 2) laws relative to the civil and penal responsibilities of the King's ministers,
- 3) State budgets and accounts, without prejudice to Article 174 (1), second sentence,

#### 4) the establishment of the army quotas

### 75. Initiative

(1) Each branch of the federal legislative power has the right of initiative

(2) Except for those matters described in Article 77, draft bills submitted to the Houses at the King's initiative are brought to the House of Representatives, then forwarded to the Senate

(3) Draft bills relating to the approval of treaties submitted to the Houses on the King's initiative, are introduced to the Senate and afterwards transmitted to the House of Representatives

### 76. Drafts

(1) A draft bill may be adopted by a House only after having been voted on article by article

(2) The Houses have the right to amend and to sub-divide those articles and amendments proposed

### 77 Competencies of Both Houses

(1) The House of Representatives and the Senate are equally competent with respect to

1) the declaration of constitutional revision and for constitutional revision,

2) matters requiring settlement by both legislative Houses by virtue of the Constitution,

3) laws described in Articles 5, 39, 43, 50, 68, 71, 77, 82, 115, 117, 118, 121, 123, 127 to 131, 135 to 137, 140 to 143, 145, 146, 163, 165, 166, 167 (1 3), (4), and (5), 169, 170 (2 2), (3 2), (3 3), and (4 2), and 175 to 177, in addition to those laws executed on the basis of the above-mentioned laws and articles,

4) laws to be adopted by majority vote as described in Article 4, last paragraph, in addition to those laws executed on the basis of the latter,

5) laws described in Article 34,

6) laws relating to the approval of treaties,

7) laws adopted in keeping with Article 169, to ensure respect of international or supranational commitments,

8) laws relating to the Council of State,

9) the organization of courts and tribunals,

10) laws approving co-operation agreements between State, Communities, and Regions

(2) A law adopted by majority vote as described in Article 4, last paragraph, may designate other laws for which the House of Representatives and the Senate are competent on an equal basis

### 78. Draft Bills of the House of Representatives

(1) Regarding matters other than those described in Articles 74 and 77,

draft bills adopted by the House of Representatives are then forwarded to the Senate.

(2) At the request of fifteen Senate members at least, the Senate examines the draft bills. This request is made within fifteen days after receiving the draft bill

(3) The Senate may, within a time period not exceeding sixty days

— decide against amendment of the draft bill,

— adopt the bill following amendment

(4) Should the Senate fail to act within the established time frame, or should it have informed the House of Representatives of its decision not to amend the bill, the latter is forwarded to the King by the House of Representatives

(5) If the bill has been amended, the Senate forwards it to the House of Representatives, which then makes a final decision the draft bill is either adopted, or those amendments established by the Senate are either partially or entirely rejected

#### 79. New Amendment

(1) Should, during the course of an examination as described in Article 78, last paragraph, the House of Representatives adopt a new amendment, the draft bill is returned to the Senate, which expresses its opinion on the amended bill. The Senate may, within a time period not exceeding fifteen days

— decide to accept the bill as amended by the House of Representatives,

— adopt the draft bill following further amendment

(2) Should the Senate fail to act within the established time frame, or should it inform the House of Representatives of its decision to support the draft bill as voted by the House of Representatives, the latter then forwards the bill to the King

(3) Should the bill once again be amended, the Senate forwards it to the House of Representatives which then makes a final decision by either adopting or by amending the draft bill

#### 80. Urgent Bills

(1) Should, during the presentation of a draft bill as described in Article 78, the federal Government indicate urgency, the parliamentary consultation committee described in Article 82 must determine the time frame within which the Senate must make its decision

(2) Should the commission fail to reach agreement, the time frame granted to the Senate becomes seven days, while the examination period described in Article 78 (3) becomes thirty days

#### 81. Draft Bills of the Senate

(1) Should the Senate, by virtue of its right of initiative, adopt a draft bill

in the areas described in Article 78, the draft bill is then forwarded to the House of Representatives

(2) Within a time period not exceeding sixty days, the House must give its final decision, either by rejecting or by adopting the draft bill

(3) Should the House amend the draft bill, the latter is then returned to the Senate, which must debate the amendments in accordance with the rules in Article 79

(4) In the event of application of Article 79 (3), the House statutes in a final manner within fifteen days

(5) Should the House fail to reach agreement within the time frames established in paragraphs (2) and (4), the Parliamentary Consultation Commission described in Article 82 must meet within fifteen days and establish a time limit within which the House must make a decision

(6) Should the Commission fail to reach agreement, the House must make a decision within sixty days

## **82. Consultation Commission**

(1) A Parliamentary Consultation Commission composed on an equal basis of members of the House of Representatives and of the Senate settles competency conflicts which may arise between the two Houses and may, with mutual agreement, extend the study periods described in Articles 78 to 81 at all times.

(2) Lacking majority representation by either of the two groups composing the commission, the latter must statute on a two-thirds majority basis

(3) A law determines the composition and functioning of the commission, in addition to a method of calculating the time periods described in Articles 78 to 81

## **83. Specification**

All motions and all draft bills specify whether contents refer to those issues described in Article 74, 77, or 78

## **84. Interpretation of Laws**

The authoritative interpretation of laws remains the sole competency of the law

# **CHAPTER III**

## **KING AND FEDERAL GOVERNMENT**

### **Section I—The King**

## **85. Dynasty**

(1) The King's constitutional powers are hereditary through the direct, natural, and legitimate descent from HM Leopold, Georges, Chretien, Frederic of Saxony-Coburg, by order of primogeniture

(2) The successor described in paragraph (1) shall be deprived of his rights to the crown, if he marries without the King's consent or, in the absence thereof, without the consent of those exercising the King's powers in cases provided for by the Constitution

(3) His lost right may nonetheless be re-established by the King, or, in the absence thereof, by those exercising the King's powers in cases provided for by the Constitution, in the event of agreement on the part of both Houses

#### **86. Succession**

(1) For lack of a descendant to H M Leopold, Georges, Chretien, Frederic of Saxony-Coburg, the King may name his successor, with the approval of the Houses, in such a manner as prescribed in Article 87

(2) In the absence of a nomination undertaken in the above-mentioned manner, the throne shall be vacant

#### **87. Other Kingdom**

(1) The King may not simultaneously act as head of another State without the consent of both Houses

(2) Neither of the two Houses may debate this matter unless two-thirds of their members are present, and the resolution may be adopted only with a two-thirds majority vote

#### **88. Responsibility**

The King's person is inviolable, his Ministers are responsible

#### **89. Civil List**

The civil list for the duration of each reign is established by law

#### **90. King's Tasks**

(1) Upon the King's death, the Houses meet without convocation, ten days following the decease at latest. Should the Houses have been previously dissolved, and should the convocation in the dissolution act have been made for a time later than the tenth day following the decease, then the former Houses are to return to their functions until the establishment of those destined to replace them

(2) From the moment of the King's death and until the taking of oath by his successor to the throne or by the Regent, the King's constitutional powers are exercised, in the name of the Belgian people, by the Council of Ministers, and under their responsibility

#### **91. King's Majority, Oath**

(1) The King attains his majority upon completion of his eighteenth year of age.

(2) The King may accede to the throne only after having taken the following oath before the united Houses

'I swear to observe the Constitution and the laws of the Belgian people, to preserve our national independence and our territorial integrity'

**92. Minority Guardianship**

Should, upon the King's death, his successor be under age, the two Houses meet as a single assembly, for the purpose of regency and guardianship.

**93 Inability Guardianship**

Should the King find himself unable to reign, the Ministers, having observed this inability, immediately summon the Houses. Regency and guardianship are to be provided by the United Houses

**94. Conferring Regency**

(1) Regency may be conferred on only one person

(2) The Regent may take office only after having taken the oath as specified in Article 91

**95. Vacancy of the Throne**

Should the throne be vacant, the Houses, debating as one assembly, temporarily ensure Regency, until the convening of the fully renewed Houses. This meeting must take place within two months. The new Houses, debating as one assembly, provide permanent cover for the vacancy

**Section II—The Federal Government****96. Establishing Government**

(1) The King appoints and dismisses his Ministers

(2) The Federal Government offers its resignation to the King if the House of Representatives, by an absolute majority of its members, adopts a motion of disapproval, proposing to the King the nomination of a successor to the Prime Minister, or proposes to the King the nomination of a successor to the Prime Minister within three days of the rejection of a motion of confidence. The King names the proposed successor as Prime Minister, who takes office the moment the new Federal Government is sworn in

**97. Eligibility for Government**

Belgians alone may be Ministers

**98 Royal Incompatibility**

No member of the royal family may be a Minister

**99. Composition of Government**

(1) The Council of Ministers includes fifteen members at most

(2) With the possible exception of the Prime Minister, the Council of Ministers includes as many French-speaking members as Dutch-speaking members

**100. Government in Parliament**

(1) Ministers have access to both Houses and must be heard whenever they so request

(2) The House of Representatives may demand the presence of Ministers. The Senate may request their presence for discussion of a motion or a draft bill as described in Article 77 or of a motion or a draft bill as described in Article 78, or for the exercise of its right to investigate as described in Article 56. For other matters, the Senate may request their presence.

#### **101. Responsibility, Indemnity**

(1) Ministers are responsible before the House of Representatives.

(2) No Minister may be prosecuted or pursued on account of opinions expressed in the line of his duties.

#### **102. Exclusive Responsibility**

Under no circumstances may a written or verbal order of the King diminish the responsibilities of a Minister.

#### **103. Control**

(1) The House of Representatives has the right to accuse Ministers and to confront them before the Supreme Court of Appeal, the latter alone having authority to judge them, Chambers assembled, except for that which is statuted by law, regarding the exercising of a civil suit by a victimized party and regarding crimes and misdeeds which Ministers may have committed outside their line of duty.

(2) Cases of responsibility are determined by law, as are the sentences and the manner of proceeding against them, either on the basis of the accusations introduced in the House of Representatives or on the basis of a civil suit emanating from a victimized part.

(3) Until being covered by the law described in paragraph (2), the House of Representatives holds discretionary powers to accuse a Minister, and the Supreme Court of Appeal to judge him, in those cases established by penal laws and by the application of those sentences foreseen.

#### **104. Secretaries of State**

(1) The King appoints and dismisses the Federal Secretaries of State.

(2) The latter are members of the Federal Government. They are not part of the Council of Ministers. They are deputies to a Minister.

(3) The King determines their attributions and the limits within which they may engage in countersigning.

(4) Constitutional provisions which apply to Ministers apply equally to federal Secretaries of State, with the exception of Articles 90 (2), 93, and 99.

### **Section III—Responsibilities**

#### **105. Limited Powers**

The King has no powers other than those formally attributed to him by the Constitution and by specific laws established by virtue of the Constitution itself.

**106. Countersignature**

No actions of the King may take effect without the countersignature of a Minister, who, in doing so, takes responsibility upon himself

**107. Army**

(1) The King bestows ranks within the army

(2) He appoints individuals to general administrative functions and to foreign affairs, but for those exceptions established by law

(3) He appoints individuals to other functions only by virtue of specific provisions of a law

**108. Execution of Laws**

The King establishes regulations and decrees required for the execution of laws, without ever having the power to either suspend the laws themselves, or to dispense from their execution

**109. Promulgation**

The King sanctions and promulgates laws

**110. Right to Pardon**

The King has the right to annul or to reduce sentences pronounced by judges, except for that which is statuted relative to Ministers and members of Community and Regional Governments

**111. Limitation of Pardon**

The King may not pardon a Minister or the member of a Community or Regional Government condemned by the Supreme Court of Appeal, except at the express demand of the House of Representatives or of the Council concerned

**112. Money**

The King may mint money, in keeping with the law

**113. Titles**

The King may confer titles of nobility, while remaining unable to attach privileges to the latter

**114. Military Orders**

The King may give military orders within the limits prescribed by law

**CHAPTER IV****COMMUNITIES, REGIONS****Section I—Bodies****Sub-section I—Community and Regional Councils****115. Councils**

(1 1) There is a French Community Council and a Flemish Community

Council, named Flemish Council, the composition and the functioning of which are established by law, adopted by majority vote as described in Article 4, last paragraph

(12) There is a German-speaking Community Council, the composition and the functioning of which are determined by law

(2) Without prejudice to Article 137, regional bodies as described in Article 39 comprise a Council for each Region

#### 116. Elections

(1) The Councils are composed of elected representatives

(21) Each Community Council is composed of members elected directly as members of the concerned Community Council or as members of a Regional Council

(22) The application of Article 137 notwithstanding, each Regional Council is composed of members elected directly as members of the Regional Council concerned or as members of a Community Council

#### 117. Term

(1) Council members are elected for a period of five years. The Councils are completely renewed every five years

(2) Unless a law, adopted by majority vote as described in Article 4, last paragraph, should specify otherwise, Council elections are to take place on the same day and are to coincide with European Parliamentary elections

#### 118. Election Law

(1) Elections described in Article 116 (2) as well as the composition and functioning of Councils are fixed by law. But for the German-speaking Community Council, this law is adopted by majority vote as described in Article 4, last paragraph

(2) A law, adopted by majority vote as described in Article 4, last paragraph, establishes those matters relative to the election, composition, and functioning of the French Community Council, of the Walloon Regional Council and of the Flemish Community Council, which are regulated by their respective Councils, either by decree or by ruling as described in Article 134, according to the case. This decree and this ruling as described in Article 134 are adopted by a two-thirds majority vote, provided that a majority of members of the Council concerned are present

#### 119. Incompatibility

A Council member's mandate is incompatible with that of a member of the House of Representatives. Moreover, it is incompatible with a senator's mandate as described in Article 67 (1 1), (1 2) (1.6), and (1 7)

#### 120. Immunities

All Council members benefit from those immunities described in Articles 58 and 59

**Sub-section II—Regional and Community Governments****121. Community Governments**

(1) There is a French Community Government and a Flemish Community Government, the composition and functioning of which are established by law, adopted by majority vote as described in Article 4, last paragraph

(12) There is a German-speaking Community Government, the composition and functioning of which are established by law

(2) Without prejudice to Article 137, the Regional bodies described in Article 39 include a Government for each Region

**122. Incompatibility**

Members of each Community or Regional Government are elected by their Councils

**123. Remuneration, Limited Immunity**

(1) The law establishes the composition and functioning of Community and of Regional Governments. But for the case of the German-speaking Community Government, this law is adopted by majority vote as described in Article 4, last paragraph

(2) A law, adopted by majority vote as described in Article 4, last paragraph, determines those matters relative to the composition and to the functioning of the French Community Government, the Walloon Regional Government, and the Flemish Community Government, which are regulated by their respective Councils, either by decree or by ruling as described in Article 134, according to the case. This decree and this ruling described in Article 134 are adopted by a two-thirds majority vote, provided that a majority of members of the Council concerned are present

**124. Indemnity**

No member of a Community or of a Regional Government may be prosecuted or pursued on the basis of opinions or votes expressed by him in the line of his duties

**125. Accusation**

(1) All Council members benefit from those immunities described in Articles 58 and 59. Regional and Community Councils possess the right to accuse members of their respective Governments and to confront the latter before the Supreme Court of Appeal which alone may judge them, chambers together, but for that which is statuted by law regarding the exercising of civil suits by victimized parties and concerning crimes and misdeeds which Regional or Community Government members may have committed outside the line of their duties

(2) A law shall determine the cases of responsibility, the sentences to be passed upon members of Regional or Community Governments, in addition to the manner of proceeding against them, either on the basis of the

accusations expressed by their Councils or on the basis of a civil suit engaged by a victimized party

(3) Those laws described in paragraphs (1) and (2) must be adopted by a majority vote, as described in Article 4, last paragraph

(4) Until covered by the law described in paragraph (2), Regional and Community Councils possess the discretionary power to accuse a member of their Government, and the Supreme Court of Appeal to judge the latter in those cases described in penal law and through the application of penalties stipulated therein

#### **126. Regional Secretaries of State**

Constitutional dispositions relative to Regional and Community Government members, in addition to those executory laws described in Article 125, last paragraph, apply to Regional Secretaries of State

### **Section II—Responsibilities**

#### **Sub-section I—Community Responsibilities**

#### **127. Decrees, Competencies**

(1 1) The French and Dutch Community Councils, respectively, establish by decree

- 1) cultural issues,
- 2) education, with the exception of
  - a) the determination of the beginning and of the end of mandatory schooling,
  - b) minimum standards for the granting of diplomas,
  - c) attribution of pensions,
- 3) inter-Community co-operation, in addition to international co-operation, including the drafting of treaties for those matters described in 1) and 2)

(1 2) A law adopted by majority vote as described in Article 4, last paragraph, establishes those cultural matters described in 1), types of co-operation described in 3), in addition to terms governing the conclusion of treaties described in 3)

(2) These decrees have force of law in French-language and in Dutch-language regions respectively, as well as in those institutions established in the bilingual Region of Brussels-Capital which, on account of their activities, must be considered as belonging exclusively to one Community or the other

#### **128. Decrees on Personal Issues**

(1 1) The French and Flemish Community Councils rule by decree, in as much as each is concerned, on personal issues, in addition to what is included in such issues, matters of inter-communal and international cooperation, including the ratification of treaties

(1 2) A law adopted by majority vote as described in Article 4, last paragraph, establishes such personal issues, in addition to the various forms of cooperation and the terms governing ratification of treaties

(2) These decrees have force of law in French-language and in Dutch-language regions respectively, as well as in those institutions established in the bilingual Region of Brussels-Capital which, on account of their activities, must be considered as belonging exclusively to one Community or the other, unless a law adopted by majority vote as provided for in Article 4, last paragraph, makes other provisions with regard to those institutions in the bilingual Region of Brussels-Capital

### **129. Decrees on Language**

(1) The French and Dutch Community Councils rule by decree, in as much as each is concerned, excluding the federal legislator, on the use of language for

- 1) administrative matters,
- 2) education in those establishments created, subsidized, and recognized by public authorities,
- 3) social relations between employers and their personnel, in addition to corporate acts and documents required by law and by regulations

(2) These decrees have force of law in French-language and in Dutch-language regions respectively except as concerns

- those communes or groups of communes contiguous to another linguistic Region and in which the law prescribes or allows use of another language than that of the Region in which they are located For these communes, a modification of the rules governing the use of languages as described in (1) may take place only through a law adopted by majority vote as described in Article 4, last paragraph,
- services the activities of which extend beyond the linguistic Region within which they are established,
- federal and international institutions designated by law, the activities of which are common to more than one Community

### **130. German-speaking Community Council**

(1 1) The German-speaking Community Council rules by decree on

- 1) cultural issues,
- 2) personal issues,
- 3) education, within the limits established by Article 127 (1)(1,2).
- 4) inter-Community co-operation, in addition to international co-operation, including the conclusion of treaties, for issues described in 1), 2), and 3)

(1 2) The law establishes cultural and personal issues described in 1) and 2), in addition to the forms of cooperation described in 1) and the manner in which treaties are concluded

(2) These decrees have force of law in the German language Region

**131. Non-Discrimination**

The law determines measures designed to prevent all forms of discrimination for ideological or philosophical reasons.

**132. Right to Initiative**

The right of initiative belongs to the Community Government and to members of the Community Council

**133. Interpretation**

The interpretation of decrees by voice of authority belongs the Brussels-Capital Regional Council, on the other hand

**Sub-section II—Regional Responsibility****134. Regional Council Decrees**

(1) Laws executed on the basis of Article 39 determine the judicial force of the rules which the organs that they create may take in matters which they determine

(2) They may confer the power to decree with force of law to these organs, with the responsibilities and in the manner which they establish.

**Sub-section III—Special Dispositions****135. Region of Brussels-Capital**

A law adopted by majority vote as described in Article 4, last paragraph, designates those authorities within the bilingual Region of Brussels-Capital which exercise those responsibilities not attributed to Communities as described in Article 128 (1)

**136. Linguistic Groups in Brussels-Capital**

(1) There are linguistic groups within the Brussels-Capital Regional Council, and among the governing bodies, qualified with respect to Community issues, their composition, functioning, and responsibilities and, without prejudice to Article 175, their financing, are regulated by a law adopted by majority vote as described in Article 4, last paragraph

(2) The governing bodies together form the United Governing Bodies, acting as an inter-Community consultation and coordination organ

**137. French and Flemish Community Council**

In view of the application of Article 39, the French and Flemish Community Councils, in addition to their respective Governments, may exercise the responsibilities, respectively, of the Walloon and of the Flemish Regional Governments, along the terms and according to those conditions established by law. This law must be adopted by a majority vote as described in Article 4, last paragraph

**138. French Community Responsibilities**

(1) The French Community Council, on one hand, and the Walloon Regional Council and the French linguistic group of the Brussels-Capital Regional Council, on the other hand, may decide of common accord and each by decree, that the Walloon Regional Council and Government in the French language Region, and the Brussels-Capital Regional Council and its governing bodies in the bilingual Region of Brussels-Capital may exercise, in full or in part, the responsibilities of the French Community

(2) These decrees are adopted by a two-thirds majority vote within the French Community Council, and by absolute majority within the Walloon Regional Council and by the French linguistic group within the Brussels-Capital Regional Council, provided that a majority of the Council members or of the members of the linguistic group concerned are present. They may settle the financing of the responsibilities which they designate, in addition to transfers of personnel, of assets, of rights and of obligations which may concern them.

(3) These responsibilities are exercised, according to the case, either by decree, by order, or by ruling.

**139. German and Walloon Council**

(1) Upon request by their respective Governments, the German-speaking Community Council and the Walloon Regional Council may, by decree, decide of common accord that Walloon Regional responsibilities may be exercised in whole or in part by the German-speaking Community Council and Government in the German-language Region.

(2) These responsibilities may be exercised, according to the case, either by decree, by order, or by ruling.

**140. Decrees of German-speaking Institutions**

(1) The German-speaking Community Council and Government exercise by means of decrees and rulings all other responsibilities attributed by law.

(2) Article 159 is applicable to these decrees and rulings.

**CHAPTER V****CONFLICT PREVENTION, COURT OF ARBITRATION****141. Prevention of Responsibility Conflicts**

The law organizes procedures tending to foresee conflicts between laws, decrees, and rulings described in Article 134, in addition to between decrees among themselves and the rulings described in Article 134 among themselves.

**142. Court of Arbitration, i.e., Constitutional Court**

(1) There is, for all of Belgium, a Court of Arbitration, the composition, competencies, and functioning of which are established by law.

(2) This court statutes by means of ruling on

1) those conflicts described in Article 141,

2) the violation through a law, a decree, or a ruling as described in Article 134 of Articles 10, 11, and 24,

3) the violation through a law, a decree, or through a ruling as described in Article 134, of constitutional articles determined by law

(3) The court may be solicited by any authority designated by law, by any person with justified interests, or, on an interlocutory basis, by any jurisdiction

(4) Those laws described in paragraph (1), in paragraph (2), (3), and in Paragraph (3) are adopted by majority vote as described in Article 4, last paragraph

#### **143. Prevention and Settling of Conflicts of Interest**

(1) In the exercise of their respective responsibilities, the Federal Government, the Communities, the Regions, and the common Community Commission act in the interests of federal loyalty, in order to prevent conflicts of interest

(2) The Senate makes decisions, by means of well-founded judgments, on conflicts of interest which may exist between the various bodies through laws, decrees, or rulings as described in Article 134, within the conditions and according to the procedures determined by a law adopted by majority vote as described in Article 4, last paragraph

(3) A law adopted by majority vote as described in 4, last paragraph organizes the procedures designed to prevent and to settle conflicts of interest between Federal, Community, and Regional Governments, and between the common Community Commission assembly

(4) Concerning the prevention and the settling of conflicts of interest, the ordinary law of 9 Aug 1980 regarding institutional reform remains valid, it nonetheless can be rescinded, completed, modified, or replaced only by those laws described in paragraphs (2) and (3)

### **CHAPTER VI**

### **JUDICIARY POWER**

#### **144. Civil Rights Conflicts**

Courts hold exclusive competency with respect to conflicts involving civil rights issues

#### **145. Political Rights Conflicts**

Courts hold competency with respect to conflicts involving political rights, save for the exceptions established by law

#### **146. No Extraordinary Courts or Tribunals**

Under no circumstance may a court or contentious jurisdiction be established, other than on the sole basis of a law Under no denomination may a commission or an extraordinary tribunal be created

**147. Court of Cassation**

(1) There is a Court of Cassation for the whole of Belgium

(2) This court lacks competency regarding matters of substance save for the judgment of Ministers and of members of Regional and Community Governments

**148. Publicity**

(1) Court hearings are open, unless public access should jeopardize morals or order. In this case, the court so declares by ruling

(2) Regarding political wrongdoings or those of the press, proceedings behind closed doors may be undertaken only on the basis of a unanimous vote.

**149. Reasoned Judgments**

All judgments are well-founded. They are pronounced in open court

**150. Juries**

The jury is established for all criminal matters, in addition to issues of political and press wrongdoings

**151. Nomination of Judges**

(1) Court Magistrates and court Judges are directly named by the King

(2) Appeal Judges and the Presidents and Vice-Presidents of the High Courts of Justice to which they are attached are named by the King on two double lists. One is presented by the courts, the other by provincial Councils and by the Brussels Capital Regional Council, as the case may be

(3) Judges of the Court of Cassation are named by the King on two double lists. One is presented by the Court of Cassation, the other, alternately, by the House of Representatives and by the Senate. In both cases, candidates of one list may be placed on the other. All presentations are made public, at least fifteen days prior to nomination

(4) Courts choose within themselves their Presidents and Vice-Presidents

**152. Status of Judges**

(1) Judges are appointed for life. They retire at an age determined by law and benefit from the pension foreseen by law

(2) No Judge can be deprived of his post nor suspended except by court decision

(3) The transfer of a Judge can only take place with his consent and after a replacement has been appointed

**153. Judicial Administration**

The King appoints and dismisses officers of the public ministries working within courts and tribunals

**154. Remuneration**

Remuneration of members of the judiciary order is established by law

**155. Incompatibility, Courts of Appeal**

No Judge may accept a salaried role on behalf of a Government, unless this role is exercised free of charge and without the existence of incompatibility determined by law.

**156. Courts of Appeal**

There are five Courts of Appeal in Belgium

1) that of Brussels, with jurisdiction over the provinces of Walloon Brabant, of Flemish Brabant, and of the bilingual Region of Brussels-Capital,

2) that of Ghent, with jurisdiction over the provinces of West Flanders and of East Flanders,

3) that of Antwerp, with jurisdiction over the provinces of Antwerp and Limburg,

4) that of Lige, with jurisdiction over the provinces of Lige, of Namur, and of Luxemburg, and

5) that of Mons, with jurisdiction over the province of Hainaut

**157. Military, Commercial, and Vocational Courts**

(1) Specific laws cover the organization of military courts, their attributions, the rights and the obligations of the members of these courts, in addition to the duration of their assignments

(2) There are commercial courts, in locations determined by law. Their organization, attributions, and member nomination methods, in addition to the duration of assignment of their members, are described in the law

(3) The law also covers the organization of work jurisdictions, their attributions, the manner in which their members are nominated, and the duration of their assignments

**158. Attribution Conflicts**

The Court of Cassation makes decisions in attribution conflicts in the manner provided for by law

**159. Rule of Law**

Courts and tribunals may apply decisions and general, provincial, or local rulings only inasmuch as these are in conformity with the law

**CHAPTER VII****COUNCIL OF STATE, ADMINISTRATIVE JURISDICTION****160. Council of State**

(1) There is a Council of State for all of Belgium, the composition, responsibilities, and functioning of which are determined by law. However,

the law may allow the King to establish the procedure in keeping with those principles it describes.

(2) The Council of State statutes by ruling as an administrative jurisdiction, and provides an opinion in those cases determined by the law.

#### **161. Administrative Jurisdiction**

Under no circumstance may administrative jurisdiction be established other than on the sole basis of a law.

### **CHAPTER VIII**

### **PROVINCIAL AND COMMUNAL INSTITUTIONS**

#### **162. Principles**

(1) Provincial and communal institutions are governed by the law.

(2) The law applies the following principles

1) the direct election of provincial and of communal Council members,

2) the attribution to provincial and communal Councils all that which is in the provincial or communal interest, without prejudice to the approval of their actions in cases and following that manner determined by law,

3) the decentralization of attributions in favor of provincial and communal institutions,

4) the publicizing of provincial and communal Council meetings within the limits established by law,

5) the publicizing of accounts and budgets

6) the intervention of overseeing authorities or of the federal legislative power, to prevent violations of the law or harm to public interests

(3) In application of a law adopted by majority vote as described in Article 4, last paragraph, the organization and application of administrative overseeing may be determined by Community or Regional Councils

(4) In application of a law adopted by majority vote as described in Article 4, last paragraph, the decree or the ruling described in Article 134 establishes the conditions and the manner in which several provinces or communes may associate themselves or co-operate. However, the convening of several provincial or communal Councils for joint deliberation may not be allowed

#### **163. Shared Responsibility**

(1) Those responsibilities exercised within the Walloon and Flemish Regions by elected provincial bodies are exercised, in the bilingual Region of Brussels-Capital, by the French and Flemish Communities, and by the common Community Commission, each with respect to matters within their jurisdictions and by virtue of Articles 127 and 128 and, with respect to other issues, by the Brussels-Capital Region

(2) However, a law adopted by majority vote as described in Article 4, last paragraph, establishes the conditions by which the Brussels-Capital Region or all institutions the members of which are designated by the latter exercise the responsibilities described in paragraph (1) which do not depend upon those matters described in Article 39. A law adopted by the same majority establishes the attributions to those institutions described in Article 136 of all or part of the responsibilities described in paragraph (1), subject to those matters described in Articles 127 and 128

#### 164. Registers

The drafting of civil acts and maintenance of registers belong exclusively to the attributions of communal authorities

#### 165. Urban Entities, Federations of Communes

(1) The law creates urban entities and federations of communes. It determines their organization and their responsibilities through application of those principles described in Article 162

(1.2) For each urban area and for each federation there exists a Council and an executive committee

(1.3) The president of the executive committee is elected by and within the Council, his election is ratified by the King, the law establishes his statute

(1.4) Articles 159 and 190 apply to the rulings and regulations of urban entities and federations of communes

(1.5) The geographical limits of urban entities and of federations of communes may only be changed or rectified on the sole basis of a law

(2) The law creates the body within which each urban entity and nearby federations of communes may meet, according to the conditions and manner which the law establishes, for the examination of common problems of a technical nature within their respective areas of competence

(3) Several federations of communes may cooperate or associate themselves with one or more urban entities in accordance with the conditions and in the manner prescribed by law, to jointly manage and regulate those issues within their respective areas of competence. Their Councils may not engage in joint deliberation

#### 166. Brussels-Capital

(1) Article 165 applies to that urban entity to which the capital of the Kingdom belongs, with the exception of that which is established hereafter

(2) The responsibilities of the urban entity to which the Kingdom's capital belongs are, in the manner determined by a law adopted by majority vote as described in Article 4, last paragraph, exercised by those bodies of the Brussels-Capital Region created by virtue of Article 39

(3) The bodies described in Article 136-

1) possess, each for its Community, responsibilities identical to those of other organizing powers with respect to cultural, educational, and personal matters,

2) exercise, for their respective Communities, the responsibilities delegated to them by the French Community Council and by the Flemish Community Council,

3) jointly settle those matters described in 1) which are of common interest

#### **TITLE IV**

### **INTERNATIONAL RELATIONS**

#### **167. Shared Responsibility**

(1 1) The King manages international relations, without prejudice to the ability of Communities and Regions to engage in international co-operation, including the signature of treaties, for those matters within their responsibilities as established by the Constitution and in virtue thereof

(1 2) The King commands the armed forces, and determines the state of war and the cessation of hostilities. He notifies the Houses as soon as State interests and security permit and he adds those messages deemed appropriate

(1 3) Territorial transfers, exchanges, and additions may take place only by virtue of a law

(2) The King concludes treaties, with the exception of those described in Paragraph (3). These treaties may take effect only following approval of the Houses

(3) Those Community and Regional Governments described in Article conclude, in matters that concern them, treaties regarding matters that are in the scope of the responsibilities of their Councils. These treaties may take effect only following approval by the council

(4) A law adopted by majority vote as described in Article 4, last paragraph, specifies the terms for conclusion of treaties described in Paragraph (3), and for those treaties not exclusively concerned with issues within the competence of Regions or Communities or by virtue of the Constitution

(5 1) The King may denounce treaties concluded before 18 May 1993 and covering matters described in paragraph (3) of common accord with those Community or Regional Governments concerned

(5 2) The King denounces these treaties if the Community or Regional Governments concerned invite him to do so. A law adopted by majority vote as described in Article 4, last paragraph, establishes the procedure in the event of disagreement between the Community or Regional Governments concerned

#### **168. Parliament Information**

The Houses are informed from the beginning of negotiations concerning any revision of the treaties establishing the European Community in addition

to treaties and acts which may have modified or completed the latter. They are aware of the planned treaty prior to signature.

#### 169. Representation of Powers

In order to ensure respect of international or supranational obligations, the authorities described in Articles 36 and 37 may, within the limits established by law, temporarily substitute themselves for those bodies described in Articles 115 and 121. This law must be adopted by majority vote as established in Article 4, last paragraph.

### TITLE V FINANCE

#### 170. Taxes

(1) Taxes to the benefit of the State may be imposed only by virtue of a law.

(2 1) Taxes to the benefit of Communities or Regions may be imposed only through a decree or ruling as described in Article 134.

(2 2) The law determines, with respect to those taxes described in paragraph (1) those exceptions of proven necessity.

(3 1) A fee or tax may be established by a province only following the decision of its Council.

(3 2) A law determines, with respect to the taxes described in paragraph (1), those exceptions of proven necessity.

(3 3) The law can suppress, either totally or partially, the taxes referred to in paragraph (1).

(4 1) No charge or tax can be established by the urban districts, by the federation of communes, nor by the communes except by a decision made by their Councils.

(4 2) The law determines, with respect to the taxes described in paragraph (1), those exceptions of proven necessity.

#### 171. Annual Vote on Taxes

(1) Taxes to the benefit of the State, the Community, or the Region are voted on an annual basis.

(2) Rules which determine them remain valid for one year if they are not renewed.

#### 172. No Privileges

(1) No privileges with regard to taxes can be established.

(2) No exemption or reduction of taxes can be established except by a law.

#### 173. Purpose of Taxation

Except for the provinces, polders, and drainage systems, and those cases formally excepted by the laws, the decrees and rules described in Article 134,

taxes may be imposed upon citizens only for the benefit of the State, the Community, the Region, the urban entity, the federation of communes or the commune

#### **174. Budget**

(1) Each year, the House of Representatives rules on the approval of State accounts and votes on the Budget. However, the House of Representatives and the Senate establish their respective allocations on an annual basis.

(2) All State receipts and expenditure must be included in the budget and included in the accounts.

#### **175. Community Budget**

(1) A law adopted by majority vote as described in Article 4, last paragraph, establishes the method of financing for the French Community and for the Flemish Community.

(2) The French and Flemish Community Councils decide upon the spending of their respective attributions by decree.

#### **176. German-speaking Community**

(1) The method of financing of the German-speaking Community is established by law.

(2) The German-speaking Community Council decides upon the spending of its financial attributions by decree.

#### **177. Regional Budget**

(1) A law adopted by majority vote as described in Article 4, last paragraph, fixes the methods of financing for Regions.

(2) Regional Councils determine, respectively, the uses to which financial means are applied, in keeping with the terms described in Article 134.

#### **178. Financial Transfer**

Within the conditions and terms described by law adopted by majority vote as described in Article 4, last paragraph, the Brussels-Capital Regional Council transfers, by virtue of the rule described in Article 134, financial means to the Joint Community Commission and to the French and Flemish Community Commissions.

#### **179. Pension Only by Law**

Under no circumstance may a pension or other form of compensation be attributed other than by sole virtue of a law.

#### **180. State Audit Office**

(1) Members of the State Audit Office are nominated by the House of Representatives for a duration established by law.

(2) This Office is responsible for the examination and for the liquidation of general administration accounts and for the accounts of accountants working for the public treasury. It must see that no budgetary item is surpassed and that no transfers take place. The Office also oversees operations relative to the establishment and to the perception of State income, including tax collection. It establishes the accounts of the various State administrations, and is responsible, in this regard, for the collection of all required information and accounting items.

(3) General accounts of the State are submitted to the House of Representatives with State Audit Office observations.

(4) This Office is organized by law.

#### **181. Remuneration of Religious and Moral Leaders**

(1) The State awards remuneration and pensions to religious leaders; those amounts required are included in the budget on an annual basis.

(2) The State awards remuneration and pensions to representatives of organizations recognized by the law as providing moral assistance according to a non-religious philosophical concept; those amounts required are included in the budget on an annual basis.

### **TITLE VI**

### **ARMY AND POLICE**

#### **182. Army Recruitment**

Army recruitment methods are determined by law. The law also establishes matters of promotion, and the rights and obligations of military personnel.

#### **183. Military Quotas**

Military quotas are voted annually. The law establishing them remains valid for one year if it is not renewed.

#### **184. State Police**

The organization and the attributions of the State Police are the subject of a law.

#### **185. No Foreign Troops**

Under no circumstance may foreign troops be admitted within the service of the State, or occupy or cross through the territory other than on the sole basis of a law.

#### **186. Deprivation of Rank**

Military personnel may be deprived of rank, honors, and pensions only in the manner described by law.

**TITLE VII****GENERAL DISPOSITIONS****187. No Suspension of Constitution**

The Constitution may not be wholly or partially suspended

**188. Old Law**

From the day on which the Constitution becomes enforceable, all laws, decrees, rulings, rules, and other acts are annulled

**189. Binding Texts**

Constitutional texts are established in French, in Dutch, and in German

**190. Mandatory Publication of Laws**

No law, decree, or general administrative ruling, whether provincial or communal, may take effect until having been published in the manner described by law

**191. Protection of Foreigners**

All foreigners on Belgian soil benefit from that protection provided to persons and property, save for those exceptions provided for by law

**192. Legal Oaths**

No oath may be imposed other than by sole virtue of a law. The latter determines wording.

**193. Colors, Coat of Arms**

The Belgian Nation adopts red, yellow, and black colors, while the Coat of Arms depicts the Lion of Belgium with the Motto *Union Makes Strength*

**194. Capital**

The city of Brussels is the capital of Belgium and the headquarters of the Federal Government

**TITLE VIII****REVISION OF THE CONSTITUTION****195. Declaration, Dissolution, New Houses Debate**

(1) The federal legislative power has the right to declare a warranted constitutional revision of those matters which it determines

(2) Following such a declaration, the two Houses are dissolved by full right

(3) Two new Houses are then convened, in keeping with the terms of Article 46

(4) These Houses statute, of common accord with the King, on those points submitted for revision

(5) In this case, the Houses may debate only provided that two-thirds of the members composing each House are present, and no change may be adopted unless voted upon by a two-thirds majority

#### 196. Restrictions

No constitutional revision may be undertaken or pursued during times of war or when the Houses are prevented from meeting freely on federal territory

#### 197. Permanent Regency

During a Regency, no changes may be brought to the Constitution regarding the constitutional powers of the King and Articles 85 to 88, 91 to 95, 106, and 197.

#### 198. Editorial Changes

(1) In agreement with the King, the Constituting Chambers may adapt the numerical order of articles and of sub-articles of the Constitution, in addition to sub-divisions of the latter into titles, sections, and chapters, modify the terminology of dispositions not submitted for revision in order for them to be in keeping with the terminology of new dispositions, and ensure the concordance of French, Dutch, and German constitutional texts

(2) In this case, the Houses may debate only provided that two-thirds of the members composing each House are present, and no change may be adopted unless voted upon by a two-thirds majority

### TITLE IX

## SUCCESSION, TRANSITION

#### [Part I—Rules of Succession]

(1) The dispositions of Article 85 shall for the first time be applicable to the descent from H R H Prince Albert, Felix, Humbert, Theodore, Christian, Eugene, Marie, Prince of Liege, Prince of Belgium, it being understood that the marriage of H R H Princess Astrid, Josephine, Charlotte, Fabrizia, Elisabeth, Paola, Marie, Princess of Belgium, with Lorenz, Archduke of East Austria, was meant to have obtained the consent described in Article 85 (2)

(2) Until such time, the following dispositions remain in effect

(3) The constitutional powers of the King are hereditary through the direct, natural, and legitimate descent from H M Leopold, George, Chretien, Frederic of Saxony-Coburg, from male to male, by order of primogeniture and with the permanent exclusion of women and of their descendants

(4) It shall be deprived of his rights to the crown any prince who marries without the consent of the King, or, in his absence, of those who exercise his authority as provided for by the Constitution

(5) He may, however, be relieved of this deprivation by the King, or, in his absence, by those who exercise his authority as provided for by the Constitution, provided the consent of the two Houses is obtained

**[Part II—Article 32]**

The Article 32 takes effect on 1 Jan 1995

**[Part III—Article 125]**

The Article 125 is valid for events taking place after 8 May 1993

**[Part IV—Transitional Council Elections]**

(1) The next Council elections, in keeping with those dispositions of Articles 115 (2), 116 (2), 118, and 119, with the exclusion of Article 117, take place on the same day as the next general elections to the House of Representatives. The following Council elections, in keeping with Articles 115 (2), 116 (2), 118, and 119 take place on the same day as the second European Parliamentary elections following the taking of effect of Articles 115 (2), 118, 120, 121 (2), 123, and 124

(2) Prior to the next elections to the House of Representatives, Articles 116 (2), 117, and 119 are not applicable

**[Part V—Transitional House of Representatives]**

(1) Prior to the next complete renewal of the House of Representatives, notwithstanding the dispositions of Articles 43 (2), 46, 63, 67, 68, 69 (3), 70, 74, 100, 101, 111, 151 (3), 174 (1), and 180 (2), last sentence, the following dispositions remain in effect

a) Federal legislative power is collectively exercised by the King, by the House of Representatives, and by the Senate

b) The King has the right to dissolve both Houses simultaneously, and the dissolution act implies voter convocations for within forty days and House convocations for within two months

c) There are 212 members of the House of Representatives, and the federal divisor can be obtained by dividing the population of the Kingdom by 212

d) The Senate is composed

1) of 106 elected members, on the basis of the population of each province, in keeping with the terms of Article 61. The dispositions of Article 62 are applicable to the election of these Senators,

2) of members elected by provincial Councils, on the basis of one senator per 200,000 inhabitants. For each 125,000 surplus inhabitants, one additional senator is allowed. Nonetheless, each provincial Council appoints at least three senators. These members may not belong to the assembly which elects them, nor may they have been a part of the electing assembly for a period of two years prior to the election date,

3) of members elected by the Senate up to one-half of the number of senators elected by the provincial Councils. Should this number be

odd, one unit is added. These members are designated by the senators elected by virtue of 1) and 2). The election of senators elected by virtue of 2) and 3) is carried out using the proportional representation system determined by law. Should it become necessary, following 31 Dec 1994, to replace a senator elected by the Brabant Provincial Council, the Senate elects a member in accordance with those conditions established by law. With respect to this law, the House of Representatives and the Senate are competent on an equal footing

e) In order to be elected senator one must, notwithstanding Article 69 1), 2), and 4), have completed forty years of age

f) Senators are elected for a period of four years

g) Ministers may have a participatory voice in debates only in that House of which they are members. They have access to both Houses, and must be heard upon their request. The Houses may demand the presence of ministers

h) The King may pardon a minister or the member of a Community or Regional Government condemned by the Court of Cassation only following the request of one of the two Houses or of that Council concerned.

i) Judges of the Court of Cassation are appointed by the King on two double lists, one being presented by the Senate, the other by the Court of Cassation

j) Every year, the Houses vote on the budget and rule on Government accounts

k) The State Audit Office submits the general State accounts, with observations, to the House of Representatives and to the Senate

(2) Articles 50, 75 (2) and (3), 77 to 83, 96 (2), and 99 (1) take effect from the moment the next complete renewal of the House of Representatives is effected.

#### [Part VI—Transition until 31 Dec 1994]

(1) Until 31 Dec 1994, and in derogation to Article 5 (1), the provinces are Antwerp, Brabant, West Flanders, East Flanders, Hamaut, Liege, Lumburg, Luxemburg, and Namur

(2) The next provincial elections shall coincide with the next communal elections and shall take place on the second Sunday of Oct 1994. Inasmuch as the law described in paragraph (3), first part, has taken effect, electors shall be called upon on that same Sunday for the election of the Flemish Brabant and of the Walloon Brabant Provincial Councils

(3 1) The personnel and the assets of Brabant province shall be split between the province of Walloon Brabant, the province of Flemish Brabant, the Region of Brussels-Capital, the authorities and the institutions described in Articles 135 and 136, in addition to the federal authority, in keeping with the

terms determined by a law adopted by majority vote as described in Article 4 last paragraph

(3 2) Following the next renewal of the Provincial Councils and until the moment of their repartition, personnel and assets remaining in common shall be jointly managed by the province of Walloon Brabant, that of Flemish Brabant, and by the competent authorities of the bilingual Region of Brussels-Capital

(4) Until 31 Dec 1994, appeal court Judges and the Presidents and the Vice-Presidents of the High Courts of Justice upon which they depend notwithstanding Article 151 (2), are named by the King on two double lists one being presented by these courts, the other by the Provincial Councils

(5) Until 31 Dec 1994, notwithstanding Article 156 (1), the province of Brabant remains within the jurisdiction of the Appeals Court of Brussels

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# 6

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## CONSTITUTION OF BOSNIA AND HERZEGOVINA

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{Adopted on 1 Dec 1995}

### PREAMBLE

Based on respect for human dignity, liberty, and equality, Dedicated to peace, justice, tolerance, and reconciliation, Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society, Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy, Guided by the Purposes and Principles of the Charter of the United Nations, Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law, Determined to ensure full respect for international humanitarian law, Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments, Recalling the Basic Principles agreed in Geneva on 8 Sep 1995, and in New York on 26 Sep 1995, Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows

**ARTICLE I**  
**BOSNIA AND HERZEGOVINA**

**1. Continuation**

The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina," shall continue its legal existence under international law as a State, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.

**2. Democratic Principles**

Bosnia and Herzegovina shall be a democratic State, which shall operate under the rule of law and with free and democratic elections.

**3. Composition**

Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").

**4. Movement of Goods, Services, Capital, and Persons**

There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.

**5. Capital**

The capital of Bosnia and Herzegovina shall be Sarajevo.

**6. Symbols**

Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.

**7. Citizenship**

There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that

(a) All citizens of either Entity are thereby citizens of Bosnia and Herzegovina.

(b) No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(c) All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of Bosnia and Herzegovina. The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly

(d) Citizens of Bosnia and Herzegovina may hold the citizenship of another State, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Article IV (4)(d), between Bosnia and Herzegovina and that State governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence.

(e) A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. There shall be a central register of all passports issued by the Entities and by Bosnia and Herzegovina

## ARTICLE II

### HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

#### 1. Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement

#### 2. International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law

#### 3. Enumeration of Rights

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above, these include

- (a) The right to life
- (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment
- (c) The right not to be held in slavery or servitude or to perform forced or compulsory labor
- (d) The rights to liberty and security of person

(e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings

(f) The right to private and family life, home, and correspondence

(g) Freedom of thought, conscience, and religion

(h) Freedom of expression

(i) Freedom of peaceful assembly and freedom of association with others

(j) The right to marry and to found a family

(k) The right to property

(l) The right to education

(m) The right to liberty of movement and residence

#### **4. Non-Discrimination**

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

#### **5. Refugees and Displaced Persons**

All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.

#### **6. Implementation**

Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above.

#### **7. International Agreements**

Bosnia and Herzegovina shall remain or become party to the international agreements listed in Annex I to this Constitution.

#### **8. Cooperation**

All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to any international human rights monitoring mechanisms established for Bosnia and Herzegovina, the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution, the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal), and any other organization.

authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law

### ARTICLE III

#### RESPONSIBILITIES OF AND RELATIONS BETWEEN THE INSTITUTIONS OF BOSNIA AND HERZEGOVINA AND THE ENTITIES

##### 1. Responsibilities of the Institutions of Bosnia and Herzegovina

The following matters are the responsibility of the institutions of Bosnia and Herzegovina

- (a) Foreign policy
- (b) Foreign trade policy
- (c) Customs policy
- (d) Monetary policy as provided in Article VII
- (e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina
- (f) Immigration, refugee, and asylum policy and regulation
- (g) International and inter-Entity criminal law enforcement, including relations with Interpol
- (h) Establishment and operation of common and international communications facilities
- (i) Regulation of inter-Entity transportation
- (j) Air traffic control

##### 2. Responsibilities of the Entities

(a) The Entities shall have the right to establish special parallel relationships with neighboring States consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina

(b) Each Entity shall provide all necessary assistance to the Government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of Bosnia and Herzegovina shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of Bosnia and Herzegovina in an international organization

(c) The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.

(d) Each Entity may also enter into agreements with States and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.

### **3. Law and Responsibilities of the Entities and the Institutions**

(a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

(b) The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.

### **4. Coordination**

The Presidency may decide to facilitate inter-Entity coordination on matters not within the responsibilities of Bosnia and Herzegovina as provided in this Constitution, unless an Entity objects in any particular case.

### **5. Additional Responsibilities**

(a) Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities, are provided for in Annexes 5 through 8 to the General Framework Agreement, or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.

(b) Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

## **ARTICLE IV**

### **PARLIAMENTARY ASSEMBLY**

The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives.

#### **1. House of Peoples**

The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

(a) The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the

House of Peoples of the Federation Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska

(b) Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present.

## 2. House of Representatives

The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska

(a) Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement

(b) A majority of all members elected to the House of Representatives shall comprise a quorum

## 3. Procedures

(a) Each chamber shall be convened in Sarajevo not more than 30 days after its selection or election

(b) Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected

(c) All legislation shall require the approval of both chambers

(d) All decisions in both chambers shall be by majority of those present and voting. The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the Delegates or Members elected from either Entity

(e) A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates selected in accordance with paragraph 1 (a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting

(f) When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter

will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity

(g) The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. The House of Peoples elected in the first elections after the entry into force of this Constitution may not, however, be dissolved

(h) Decisions of the Parliamentary Assembly shall not take effect before publication

(i) Both chambers shall publish a complete record of their deliberations and shall, save in exceptional circumstances in accordance with their rules, deliberate publicly.

(j) Delegates and Members shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly

#### **4. Powers**

The Parliamentary Assembly shall have responsibility for

(a) Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution

(b) Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina

(c) Approving a budget for the institutions of Bosnia and Herzegovina

(d) Deciding whether to consent to the ratification of treaties

(e) Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities

### **ARTICLE V**

#### **PRESIDENCY**

The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska

##### **1. Election and Term**

(a) Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement. Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly

(b) The term of the Members of the Presidency elected in the first election shall be two years; the term of Members subsequently elected shall be four years. Members shall be eligible to succeed themselves once and shall thereafter be ineligible for four years.

## 2. Procedures

(a) The Presidency shall determine its own rules of procedure, which shall provide for adequate notice of all meetings of the Presidency. (b) The Members of the Presidency shall appoint from their Members a Chair. For the first term of the Presidency, the Chair shall be the Member who received the highest number of votes. Thereafter, the method of selecting the Chair, by rotation or otherwise, shall be determined by the Parliamentary Assembly, subject to Article IV (3).

(c) The Presidency shall endeavor to adopt all Presidency Decisions [i.e., those concerning matters arising under Article III (1)(a) - (e)] by consensus. Such decisions may, subject to paragraph (d) below, nevertheless be adopted by two Members when all efforts to reach consensus have failed.

(d) A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory, to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member, or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.

## 3. Powers

The Presidency shall have responsibility for

- (a) Conducting the foreign policy of Bosnia and Herzegovina
- (b) Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation
- (c) Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member
- (d) Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina
- (e) Executing decisions of the Parliamentary Assembly
- (f) Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly
- (g) Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.

(h) Coordinating as necessary with international and non-governmental organizations in Bosnia and Herzegovina

(i) Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities

#### **4. Council of Ministers**

The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.

(a) Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III (1), (4), and (5) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).

(b) No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.

(c) The Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly.

#### **5. Standing Committee**

(a) Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the Government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.

(b) The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee.

### **ARTICLE VI**

### **CONSTITUTIONAL COURT**

#### **1. Composition**

The Constitutional Court of Bosnia and Herzegovina shall have nine members.

(a) Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika

Srpska The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.

(b) Judges shall be distinguished jurists of high moral standing Any eligible voter so qualified may serve as a Judge of the Constitutional Court The Judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighboring state

(c) The term of Judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other Judges Judges initially appointed shall not be eligible for reappointment Judges subsequently appointed shall serve until age 70, unless they resign or are removed for cause by consensus of the other Judges

(d) For appointments made more than five years after the initial appointment of Judges, the Parliamentary Assembly may provide by law for a different method of selection of the three Judges selected by the President of the European Court of Human Rights.

## **2. Procedures**

(a) A majority of all members of the Court shall constitute a quorum

(b) The Court shall adopt its own rules of court by a majority of all members It shall hold public proceedings and shall issue reasons for its decisions, which shall be published

## **3. Jurisdiction**

The Constitutional Court shall uphold this Constitution

(a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to

— Whether an Entity's decision to establish a special parallel relationship with a neighboring State is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina

— Whether any provision of an Entity's constitution or law is consistent with this Constitution Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity

(b) The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina

(c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law,

on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina, or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision

#### **4. Decisions**

Decisions of the Constitutional Court shall be final and binding

### **ARTICLE VII CENTRAL BANK**

There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina

#### **1. Responsibility**

The Central Bank's responsibilities will be determined by the Parliamentary Assembly. For the first six years after the entry into force of this Constitution, however, it may not extend credit by creating money, operating in this respect as a currency board, thereafter, the Parliamentary Assembly may give it that authority

#### **2. Composition**

The first Governing Board of the Central Bank shall consist of a Governor appointed by the International Monetary Fund, after consultation with the Presidency, and three members appointed by the Presidency, two from the Federation (one Bosniac, one Croat, who shall share one vote) and one from the Republika Srpska, all of whom shall serve a six-year term. The Governor, who shall not be a citizen of Bosnia and Herzegovina or any neighboring State, may cast tie-breaking votes on the Governing Board.

#### **3. Term**

Thereafter, the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of five persons appointed by the Presidency for a term of six years. The Board shall appoint, from among its members, a Governor for a term of six years.

### **ARTICLE VIII FINANCES**

#### **1. Budget**

The Parliamentary Assembly shall each year, on the proposal of the Presidency, adopt a budget covering the expenditures required to carry out the responsibilities of institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina.

#### **2. Provisional Budget**

If no such budget is adopted in due time, the budget for the previous year shall be used on a provisional basis.

**3. Shares in Revenues**

The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly

**ARTICLE IX****GENERAL PROVISIONS****1. Eligibility, International Tribunal**

No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina

**2. Compensation**

Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure

**3. General Representation**

Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina

**ARTICLE X****AMENDMENT****1. Amendment Procedure**

This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives

**2. Human Rights and Fundamental Freedoms**

No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph

**ARTICLE XI****TRANSITIONAL ARRANGEMENTS**

Transitional arrangements concerning public offices, law, and other matters are set forth in Annex II to this Constitution

**1. Joint Interim Commission**

(a) The Parties hereby establish a Joint Interim Commission with a mandate to discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals

(b) The Joint Interim Commission shall be composed of four persons from the Federation, three persons from the Republika Srpska, and one representative of Bosnia and Herzegovina

(c) Meetings of the Commission shall be chaired by the High Representative or his or designee

## **2. Continuation of Laws**

All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina

## **3. Judicial and Administrative Proceedings**

All proceedings in courts or administrative agencies functioning within the territory of Bosnia and Herzegovina when the Constitution enters into force shall continue in or be transferred to other courts or agencies in Bosnia and Herzegovina in accordance with any legislation governing the competence of such courts or agencies

## **4. Offices**

Until superseded by applicable agreement or law, governmental offices, institutions, and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law

## **5. Treaties**

Any treaty ratified by the Republic of Bosnia and Herzegovina between January 1, 1992 and the entry into force of this Constitution shall be disclosed to Members of the Presidency within 15 days of their assuming office, any such treaty not disclosed shall be denounced Within six months after the Parliamentary Assembly is first convened, at the request of any member of the Presidency, the Parliamentary Assembly shall consider whether to denounce any other such treaty

# **ARTICLE XII**

## **ENTRY INTO FORCE**

### **1. Superseding Old Constitution**

This Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina

### **2. Conformity of Old Constitutions**

Within three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III (3)(b)

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## **CONSTITUTION OF BRAZIL**

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**(Adopted on 5 Oct 1988)**

### ***PREAMBLE***

#### **ADOPTION OF THE NEW CONSTITUTION**

We, the representatives of the Brazilian People, assembled in the National Constituent Assembly to institute a Democratic State for the purpose of ensuring the exercise of social and individual rights, liberty, security, well being, development, equality and justice as supreme values of a fraternal Pluralist and unprejudiced society, based on social harmony and committed, in the internal and international spheres, to the peaceful solution of disputes, promulgate, under the protection of God, this Constitution of the Federative Republic of Brazil

### ***TITLE I***

#### **FUNDAMENTAL PRINCIPLES**

##### **1. State Principles**

(0) The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities, as well as the Federal District, is a legal Democratic State and is founded on.

- I sovereignty,
- II citizenship,
- III the dignity of the individual,

IV the social values of work and of free enterprise,

V political pluralism

(1) All power emanates from the people, who exercise it by means of elected representatives or directly, according to this Constitution

## **2. State Powers**

The Legislative, the Executive and the Judiciary, which are independent of and harmonious among each other, are Branches of the Union

## **3. State Objectives**

The fundamental objectives of the Federative Republic of Brazil are

I to build a free, just and solidary society,

II to guarantee national development,

III to eradicate poverty and marginal living conditions and to reduce social and regional inequalities,

IV to promote the well being of all, without prejudice as to origin, race, sex, color, age, and any other forms of discrimination

## **4. International Relations**

(0) The international relations of the federative Republic of Brazil are governed by the following principles

I national independence,

II prevalence of human rights,

III self determination of peoples,

IV non intervention,

V equality among the States,

VI defense of peace,

VII pacific solution of conflicts,

VIII repudiation of terrorism and racism,

IX cooperation among people for the progress of mankind,

X granting of political asylum

(1) The Federative Republic of Brazil shall seek economic, political, social, and cultural integration of the peoples of Latin America, in order to form a Latin American community of nations

**TITLE II**  
**FUNDAMENTAL RIGHTS AND GUARANTEES**

**CHAPTER I**  
**INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES**

**5. Equality**

(0) All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right of life, liberty, equality, security, and property, on the following terms

I men and women have equal rights and duties under this Constitution,

II. no one shall be obliged to do or not to do something by virtue of law,

III no one shall be submitted to torture or to inhuman or degrading treatment,

IV the expression of thought is free, and anonymity is forbidden,

V the right to answer is ensured, in proportion to the offense, besides compensation for property or moral damages to the image,

VI freedom of conscience and of belief is inviolable, ensuring the free exercise of religious cults and guaranteeing, as set forth in the law, the protection of places of worship and their rites,

VII under the terms of the law, the rendering of religious creed or of philosophical or political belief, unless such are claimed for exemption from a legal obligation imposed upon everyone and the person refuses to perform an alternative obligation established by law,

IX the expression of intellectual, artistic, scientific and communications activities is free, without any censorship or licence,

X the privacy, private life, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from the violation thereof is ensured,

XI the home is the inviolable asylum of the individual, and no one may enter it without the dweller's consent, save in the case of "flagrante delicto" or disaster, or to give help, or, during the day, by court order,

XII the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the events and in the manner established by the law for purposes of criminal investigation or criminal procedural discovery,

XIII the practice of any work, trade or profession is free, observing the professional qualifications which the law may establish,

XIV access to information is ensured to everyone and confidentiality of the source is protected whenever necessary for the professional activity,

XV locomotion within the national territory is free in times of peace, and any person may, under the terms of the law, enter it, remain in it or leave it with his or her assets,

XVI all persons may hold peaceful meetings, without weapons, in places open to the public, regardless of authorization, provided that they do not frustrate another meeting previously called for the same place, subject only to prior notice to the proper authority,

XVII full freedom of association for lawful purposes is granted, any paramilitary association being forbidden,

XVIII the creation of associations and, set forth in the law, of cooperatives, does not require any authorization by the state,

XIX associations may only be compulsorily dissolved or have their activities suspended by court decision, and, in the first case, only if the decision is final and unappealable,

XX no one can be compelled to become associated or to remain associated,

XXI associations, when expressly authorized to do so, are entitled to represent their members in and out of court,

XXII the right to own property is guaranteed,

XXIII ownership of property shall attend to its social function,

XIV the law shall establish the procedure of expropriation for public use or need, or for social interest, against just and prior compensation in money, with the exception of the cases set forth in this Constitution,

XXV in the event of imminent public danger, the proper authority may make use of private property, and the owner shall be assured of subsequent compensation, in case of damages,

XXVI small rural properties, as defined by law, whenever they are explored by the family, are not subject to attachment for the payment of debts incurred by reason of their productive activities, and the law shall provide for the means to finance their development,

XXVII authors have exclusive rights to use, publish or reproduce their works, and such rights may be conveyed to their heirs for the period which the law may establish,

XXVIII under the terms of the law, the following is ensured

(a) protection of individual participation in collective works and of reproduction of the human voice and image, including such with regard to sports activities,

(b) the right to the authors, performers, and respective trade unions and associations to monitor the economic exploitation of the works which they create or in which they participate,

XXIX the law shall assure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, of ownership of trade marks, of companies names and of other distinctive signs, with due regard for social interests and for the technological and economic development of Brazil,

XXX the right to inheritance is guaranteed,

XXXI succession to assets owned by foreigners and located in Brazil shall be governed by Brazilian law, in favor of the Brazilian spouse or children, whenever the personal law of the *de cuius* is not favorable to them,

XXXII the State shall provide, as set forth in the law, for the defense of consumers,

XXXIII all persons are entitled to receive from government agencies information of private interest to such persons or of collective or general interest which shall be provided within the period established by law, subject to liability, with the exception of information whose secrecy is vital to the security of society and of the State,

XXXIV all persons are ensured, without the payment of fees

(a) the right to petition the public authorities in defending rights or against illegal acts or abuse of power,

(b) the obtaining of certificates from Government departments, in order to defend rights and clarify situations of personal interest,

XXXV the law shall not exclude from review by the Judiciary any violation of or threat to a right,

XXXVI the law shall not impair a vested right, a perfect juridical act, and the principle of *res judicata*,

XXXVII there shall be no extraordinary court or tribunal,

XXXVIII the institution of the jury is recognized, with the organization attributed to it by the law, and the guarantee of

a) full defense,

b) secret voting,

c) sovereignty of the verdicts,

d) jurisdiction to adjudicate intentional crimes against life,

XXXIX there is no crime without a previous law which defines it, nor is there any punishment without a previous legal imposition,

XL the penal law shall not be retroactive, except to the benefit of the defendant,

XLI the law shall punish any discrimination against fundamental rights and liberties,

XLII the practice of racism is a crime not entitled to bail or to the statute of limitations, and subject to imprisonment, according to the law;

XLIII the law shall consider the practice of torture, unlawful traffic of narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail and to mercy or amnesty, and the principals, the accessories and those who, although able to avoid them, abstain from doing so, shall be held liable,

XLIV the acts of civilian or military armed groups, against the constitutional and democratic order, are crimes not entitled to bail or subject to the statute of limitations,

XLV no sentence shall pass from the person of the convict, but the liability for damages and a decree of loss of assets may, under the terms of the law, be extended to the successors and enforced against them up to the limit of the value of the assets transferred,

XLVI the law shall regulate the individualization of punishment and shall adopt, *inter alia* the following

- a) deprivation or restriction of freedom,
- b) loss of assets,
- c) fines,
- d) alternative social obligation,
- e) suspension or prohibition of rights,

XLVII there may be no sentence

- a) of death, except in the event of declared war, according to Article 84 XIX,
- b) of life imprisonment,
- c) of hard labor,
- d) of banishment,
- e) which is cruel

XLVIII the sentence shall be served in separate establishments, according to the nature of the criminal offence, the age, and the sex of the convict,

XLIX convicts are assured of respect for their physical and moral integrity,

L female convicts are allowed to keep their children with them during the period in which they are breast feeding,

LI no Brazilian may be extradited, except for naturalized Brazilians in the case of a common crime committed before naturalization, or proven involvement in the unlawful traffic of narcotics and similar drugs, as set forth in the law,

LII extradition of a foreigner for a political or ideological crime may not be granted,

LIII no one shall be sued or sentenced other than by the proper authority,

LIV no one may be deprived of his or her freedom or assets without due process of law,

LV litigants in court or administrative proceedings and defendants in general are assured of the use of the adversary system and of full defense, with the means and remedies inherent thereto,

LVI evidence obtained through unlawful means is inadmissible in the proceedings,

VII no one may be considered guilty until the criminal sentence has become final and unappealable,

LVIII a person who has undergone civil identification shall not be subjected to criminal identification, except in the cases set forth in the law,

LIX private prosecution against public offenses shall be admitted if public prosecution is not filed within the period established by law;

LX. the law may only restrict publicity of procedural acts when it is necessary to defend privacy or social interests,

LXI no one may be arrested except in flagrante delicto or by written and substantiated order of a proper judicial authority, except in the case of a military offense or a strictly military crime, as defined by law,

LXII the arrest of any person and the place where he or she is being held must immediately be communicated to the proper judge and to the arrested person's family or to the person designated by him or her,

LXIII the arrested person has to be informed of his or her rights, amongst which is the right to remain silent, and the arrested person shall be assured of the assistance of his or her family and of legal counsel;

LXIV the arrested person is entitled to identification of the persons responsible for his or her arrest or police interrogation,

LXV an illegal arrest must immediately be remitted by the judicial authority,

LXVI no one may be taken to prison or held therein when the law admits release on own recognizance, with or without bail,

LXVII there shall be no civil arrest for indebtedness, save for that of a person liable for voluntary and inexcusable default on an alimony obligation and that of an unfaithful trustee,

LXVIII the right to habeas corpus is granted whenever someone suffers or believes he or she is threatened by violence or coercion in his or her freedom of movement, by illegal act, or abuse of power,

LXIX a writ of mandamus shall be issued to protect a clear legal right which is not protected by habeas corpus or habeas data, when the party responsible for the illegal act or abuse of power is a public authority or an agent of a legal entity performing government duties,

LXX a collective writ of mandamus may be filed by

a) a political party, represented in Congress,

b) a trade union, professional entity, or association legally organized and in operation for at least one year, to defend the interests of its members or associates,

LXXI an injunction shall be issued whenever the absence of regulations makes it unfeasible to exercise the constitutional rights and liberties and the prerogatives inherent to nationality, sovereignty, and citizenship,

LXXII the right to habeas data is granted

a) to ensure knowledge of information relating to the person of the

petitioner, contained in records or data banks of government entities or of public entities,

b) for the correction of data, if the petitioner does not prefer to do so through confidential, judicial, or administrative proceedings,

LXXIII any citizen has standing to institute an action seeking to annul an act to the public property or to property pertaining to an entity in which the State participates, to administrative morality, to the environment, and to historical and cultural monuments, and the plaintiff shall, except in the vent of proven bad faith, be exempt from court costs and from the burden of loss of suit,

LXXIV the State has to provide full and gratuitous legal assistance to whoever proves not to have sufficient funds,

LXXV the State shall indemnify a person convicted by a judicial error, and also convict who remains imprisoned longer than the period established in the sentence,

LXXVI the following shall be gratuitous for persons known to be poor, as set forth in the law

a) civil registration of birth,

b) death certificates,

LXXVII habeas corpus and habeas data proceedings and, set forth in the law, the acts required to exercise citizenship are gratuitous

(1) The provisions defining fundamental rights and guarantees are applicable immediately

(2) The rights and guarantees established in this Constitution do not preclude others arising out of the regime and the principles adopted by it, or out of international treaties to which the Federative Republic of Brazil is a party

## *CHAPTER II*

### **SOCIAL RIGHTS**

#### **6. Basic principles**

Education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights under this Constitution

#### **7 The Rights**

(0) The following are rights of city and rural workers, notwithstanding any others that seek to improve their social condition

I employment protected against arbitrary dismissal or against dismissal without cause, according to a supplemental law which shall establish severance payment, among other rights,

II unemployment insurance, in the event of involuntary unemployment,

III. unemployment compensation fund,

IV a minimum wage nationwide, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation, and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to bind it for any purpose,

V a salary or wage in proportion to the extent and complexity of the work,

VI irreducibility of salary or wage, except when provided for in collective agreements or covenants,

VII guarantee of salary or wage never below the minimum wage, for those receiving variable compensation,

VIII a thirteenth salary based on the full compensation or on the pension payment,

IX compensation for night work above that for daytime work,

X salary protection, as established by law, malicious withholding of a salary being considered a crime,

XI participation in the profits or results, independent of compensation, and, exceptionally, participation in the management of the company, as defined by law,

XII family allowance for their dependents,

XIII normal work hours not exceeding eight hours per day and forty-four hours per week, with the option to set off work hours and reduce the work day through an agreement or a collective bargaining covenant,

XIV a work day of six hours for work carried out in uninterrupted shifts, unless otherwise established by collective bargaining,

XV paid weekly leave, preferably on Sundays,

XVI compensation for overtime work at least fifty per cent above the compensation for normal work,

XVII annual vacation with compensation at least one third above the normal salary,

XVIII maternity leave without loss of job and of salary, for a period of one hundred and twenty days,

XIX paternity leave, under the terms established by law,

XX protection of the work market for women through specific incentives according to the law,

XXI prior notice of dismissal in proportion to period of service, but at least thirty days, under the terms of the law,

XXII reduction of work risks by means of health, hygiene, and safety rules,

XXIII additional compensation for unhealthy or dangerous work, as established by law,

XXIV retirement pension,

XXV gratuitous assistance for the children and dependents from birth to six years of age, in day care centers and kindergartens,

XXVI recognition of covenants and of collective bargaining agreements,

XXVII protection by virtue of automation, as established by law,

XXVIII work accident insurance, under the responsibility of the employer, without excluding the indemnity for which the employer is liable, in the event of malice or fault,

XXIX legal action for credits arising out of employment, with a statute of limitations

a) of five years for city workers, up to the limit of two years after ending the employment contract,

b) of up to two years after ending the contract, for rural workers,

XXX prohibition of any difference in salary, in performance of duties, and in hiring criteria by reason of sex, age, color, or marital status,

XXXI prohibition of any discrimination with respect to salary and hiring criteria for handicapped workers,

XXXII prohibition of any distinction between manual, technical, and intellectual labor or between the respective professionals,

XXXIII prohibition of night, dangerous, or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice,

XXXIV equal rights for workers with a permanent employment bond and sporadic workers

(1) The category of domestic workers is assured of the rights set forth in Items IV, VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as integration into the social security system

## 8. Work and trade union

(0) Professional or trade union association is free, with due regard for the following

I the law may not require State authorization for a trade union to be founded, except for registration with the proper agency, it being forbidden to the Government to interfere and intervene in trade union organization,

II it is forbidden to create more than one trade union organization, of any level, representing a professional or economic category, in the same territorial base, which shall be defined by the interested workers or employers, which base may not cover less than the area of one Municipality,

III it is incumbent upon the trade union to defend the collective or individual rights and interests of the category, including in court or administrative disputes,

IV the general meeting shall establish the contribution which, in the case of a professional category, shall be discounted from the payroll, to support the confederative system of the respective trade union representation, regardless of the contribution set forth in the law,

V no one shall be required to become a member or to remain a member of a trade union,

VI it is compulsory for the trade unions to take part in collective labor bargaining,

VII retired members shall be entitled to vote and be voted on in trade union organizations,

VIII dismissal of an employee who is a union member is forbidden as from the moment when he or she registers as a candidate for a position of union leader or representative and, if elected, even as an alternate, until one year after termination of his or her term of office, unless he or she commits a serious fault under the terms of the law.

(1) The provisions of this article apply to the organization of rural trade unions and of fishing communities, with due regard for the conditions established by law

#### 9. Strike

(0) The right to strike is guaranteed, and it is incumbent upon the workers to decide on the advisability of exercising it and on the interests to be defended thereby

(1) The law defines which services or activities are essential and provides for the community's basic needs to be satisfied.

(2) In cases of abuse, the responsible parties are to be submitted to the penalties of the law

#### 10. Representation

The participation of workers and employers is ensured in the collegiate bodies of government agencies in which their professional or social security interests are the subject of discussion and resolution

#### 11. Authority of the representative

In companies having more than two hundred employees, the election of an employee representative is ensured for the exclusive purpose of furthering direct discussions with their employers

### CHAPTER III NATIONALITY

#### 12. Brazilian Nationality

(0) The following are Brazilians

I by birth

a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not in the service of their country,

b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is serving the Federative Republic of Brazil,

c) those born abroad, of a Brazilian father or a Brazilian mother, provided that they are registered with a proper Brazilian authority, or those who come to live in Brazil before coming of age and, having come of age, opt for Brazilian nationality at any time,

## II naturalized

a) those who, as set forth by law, acquire Brazilian nationality, and, for persons originating from Portuguese speaking countries, the only requirement being residence for one uninterrupted year and moral integrity,

b) foreigners of any nationality, resident in the Federative Republic of Brazil for over thirty years uninterruptedly and without any criminal conviction, provided that they apply for Brazilian nationality

(1) The rights inherent to born Brazilians shall be attributed to Portuguese citizens permanently resident in Brazil if Brazilians are afforded reciprocal treatment, except in the events set forth in this Constitution

(2) The law may not establish any distinction between born and naturalized Brazilians, except in the events set forth in this Constitution

(3) Only born Brazilians may hold the office of

I President and Vice President of the Republic,

II President of the House of Representatives,

III President of the Federal Senate,

IV Justice of the Federal Supreme Court,

V the diplomatic career,

VI officer of the Armed Forces

(4) Loss of nationality shall be declared for a Brazilian who

I has his naturalization cancelled by court decision by virtue of an activity detrimental to the national interests,

II acquires another nationality except in case of

a) recognition of the original nationality by the foreign legislation,

b) imposition of naturalization by foreign rules, to the Brazilian resident in foreign State, as a condition for him to stay in its territory or for the exercise of civil rights

## 13 Language and Federation Symbols

(0) Portuguese is the official language of the Federative Republic of Brazil

(1) The national flag, anthem, coat of arms, and seal are symbols of the Federative Republic of Brazil

(2) The States, the Federal District, and the Municipalities may have symbols of their own

## CHAPTER IV

### POLITICAL RIGHTS

#### 14. Sovereignty of the People and Political Rights of the Citizens

(0) The sovereignty of the people is exercised by universal suffrage, and by direct and secret ballot, with equal value for all, and, according to the law, by

- I plebiscite,
- II referendum,
- III initiative of the people

(1) Electoral enrolment and voting are

- I compulsory for persons over eighteen years of age,
- II optional for
  - a) illiterate persons,
  - b) persons over seventy years of age,
  - c) persons over sixteen and under eighteen years of age

(2) Foreigners cannot register as voters and neither can conscripts during their period of compulsory military service

(3) The conditions for eligibility, according to the law, are the following.

- I Brazilian nationality,
- II Full exercise of political rights,
- III electoral enrolment,
- IV electoral domicile in the district,
- V membership in a political party,
- VI the minimum age of

a) thirty five years for President and Vice President of the Republic and Senator,

b) thirty years for Governor and Vice Governor of a State and of the Federal District,

c) twenty-one years for Federal, State or District Representative, Mayor, Vice Mayor, and Justice of Peace,

d) eighteen years for City Councilman

(4) Persons that are illiterate or cannot register as voters are not eligible

(5) The President of the Republic, the State and Federal District Governors, the Mayors and those that have succeeded them or replaced them during the six months preceding the election, are not eligible to the same offices in the subsequent term

(6) In order to run for other offices, the President of the Republic, the State and Federal District Governors, and the Mayors shall resign from their respective offices at least six months before the election

(7) The spouse and relatives by blood or marriage up to the second degree, or by adoption, of the President of the Republic, of the Governor of a

State or Territory, or of the Federal District, of a Mayor or those that have replaced them during the six months preceding the election, are not eligible in the jurisdiction of the incumbent, unless they already hold an elective office and are candidates for re-election

(8) An active member of the armed forces who can register as voter is eligible under the following conditions

I if he has served for less than ten years, he shall be on leave from military activities,

II if he has served for more than ten years, he shall be discharged of military duties by his superiors and, if elected, he shall be automatically retired upon investiture

(9) A supplemental law shall establish other cases of ineligibility and the periods for such ineligibility to cease, in order to protect normal and legitimate elections from the influence of economic power or abuse in the exercise of an office, position, or job in the direct or indirect administration

(10) Exercise of an elective office may be challenged before the Electoral Courts within a period of fifteen days after investiture, substantiating the suit with evidence of abuse of economic power, corruption, or fraud

(11) The suit challenging the office shall be conducted in secrecy and the plaintiff is liable under the law if the suit is reckless or involves manifest bad faith

### **15. Suspension of political rights**

Disfranchisement of political rights is forbidden, and loss or suspension of such rights shall apply only in the event of

I cancellation of naturalization by a final and unappealable judgement,

II absolute civil incapacity,

III final and unappealable criminal sentence, as long as its effects last,

IV refusal to comply with an obligation imposed upon everyone or an alternative obligation, according to Article 5 VIII,

V administrative dishonesty, according to Article 37 (4)

### **16. Electoral procedure laws**

A law altering electoral procedure shall only come into force one year after it is enacted

## **CHAPTER V POLITICAL PARTIES**

### **17. Political Association**

(0) The creation, consolidation, merger and extinction of political parties is free, with due regard for national sovereignty, the democratic regime, plurality of political parties, the fundamental rights of the individual, and observing the following precepts

- I. national character;
  - II. prohibition from receiving financial assistance from a foreign entity or government or from subordination to same,
  - III. rendering of accounts to the Electoral Courts:
  - IV. operation in Congress according to the law.
- (1) Political parties are assured of autonomy in defining their internal structure, organization and operation, and their bylaws shall establish rules of party loyalty and discipline.
  - (2) After acquiring legal capacity under civil law, political parties shall register their by-laws at the Superior Electoral Court.
  - (3) Political parties are entitled to funds from the party fund and to gratuitous access to radio and television, as set forth in the law
  - (4) Political parties are forbidden to use paramilitary organizations

### *TITLE III*

## **THE ORGANIZATION OF THE STATE**

### *CHAPTER I*

## **THE POLITICAL AND ADMINISTRATIVE ORGANIZATION**

### **18. Organization of Authorities**

(0) The political administrative organization of the federative Republic of Brazil comprises the Union, the States, the Federal District, and the Municipalities, all being autonomous under this Constitution.

(1) Brasilia is the Federal Capital.

(2) The Federal Territories are part of the Union, and their creation, transformation into States, or re-integration into the State of origin are governed by a supplemental law.

(3) The States may be merged into each other, subdivided, or split to be annexed to others, or form new States or Federal Territories, subject to the approval of the population directly involved, through a plebiscite, and of Congress, through a supplemental law.

(4) The creation, merger, consolidation, and splitting of Municipalities shall preserve the continuity and historical cultural unity of the urban environment, shall be implemented by a State act, obeying the requirements established in a State supplemental law, and shall depend on prior consultation of the population directly involved, by means of a plebiscite.

### **19. Forbidden to the State**

The Republic, the States, the Federal District, and the Municipalities are forbidden to:

- I. establish religious cults or churches, subsidize them, hamper their operation or maintain with them or their representatives relations of dependency or alliance, with the exception of cooperation for the public interest, as set forth in the law;

- II refuse to certify public documents,
- III create differences between Brazilians or preferences between each other.

## CHAPTER II

### THE UNION

#### 20. Propriety of the Union

(0) The following is property of the Union

I property belonging to it at present and property that may be attributed to it,

II unoccupied government lands indispensable for defense of the frontiers, of the forts, and military constructions, of the federal access ways and for preservation of the environment, as defined by the law,

III the lakes, rivers, and any water courses of any kind on lands owned by the Republic, or which water more than one State, serve as borders with other countries, or run into or from a foreign territory, as well as bank lands and river beaches,

IV river and lake islands in zones bordering on other countries, sea beaches, ocean and shore islands, the latter excluding the areas referred to in Article 26 II,

V. natural resources of the continental shelf and of the exclusive economic zone,

VI territorial waters;

VII tide lands and those added to them

VIII hydraulic energy potentials,

IX mineral resources, including those in the subsoil,

X natural underground cavities and pre-historical and archaeological sites,

XI lands traditionally occupied by Indians

(1) Under the terms of the law, the States, Federal District, and the Municipalities, as well as the agencies of the direct administration of the Republic are assured of participation in the result of the exploitation of petroleum or natural gas, of hydric resources for the purpose of generating electric energy, and of other natural resources in their respective territory, continental shelf, territorial waters, or exclusive economic zone, or financial compensation for such exploitation

(2) The strip for land with a width of up to one hundred and fifty kilometres along the land frontiers, designated as frontier strip, is considered fundamental for defense of the national territory, and the occupation and use thereof shall be regulated by law.

#### 21. Powers and responsibilities of the Union

It is incumbent upon the Union

I to maintain relations with foreign States and participate in international organizations,

II to declare war and make peace,

III to warrant national defense,

IV to allow, in the events set forth in a supplemental law, foreign forces to cross the national territory or remain in it temporarily,

V to decree state of siege, state of defense, and federal intervention,

VI to authorize and monitor the production and trade of war material,

VII to issue currency,

VIII to administer Brazil's foreign exchange reserves and monitor financial transactions, especially credit, foreign exchange and capitalization, as well as those of insurance and private pension plans,

IX to prepare and carry out national and regional plans for ordaining the territory and for economic and social development,

X to maintain the post service and national air mail,

XI to operate, either directly or through a concession to companies under state shareholding control, telephone, telegraph, data transmission, and other public communications services, provided that information services may be rendered by private entities through the public telecommunications network operated by the Republic,

XII to operate, either directly or through authorization, concession or permission

a) sound and image broadcasting services and other telecommunication services,

b) electric services and facilities and energetic use of water courses, in cooperation with the States in the hydroenergetic potentials are located,

c) air and aerospace navigation and airport infrastructure,

d) railway and waterway transportation services between Brazilian ports and national frontiers or beyond the State or Territory borders;

e) services of interstate and international highway transportation of passengers,

f) sea, river, and lake ports,

XIII to organize and maintain the Judiciary Branch, the Attorney General's office and the Public Defender's Office of the federal District and of the Territories,

XIV to organize and maintain the Federal police, the Federal highway and railway and police, as well as the civic police, the military police and the military fire brigades of the Federal District and of the Territories,

XV to organize and maintain official statistical, geographical, geological and mapping services of national scope,

XVI to classify, for purposes of indication, public amusements, and radio and television programs censorship being forbidden,

XVII to grant amnesty,

XVIII to plan and promote permanent defense against public calamities, especially droughts and floods,

XIX. to institute a national system for the management of hydric resources and define criteria for granting rights to the use thereof,

XX to institute guidelines for city development, including housing, basic sanitation, and city transportation,

XXI to establish principles and guidelines for the national transportation system,

XXII to carry out maritime, air, and frontier police services,

XXIII to operate nuclear facilities and services of any nature and exercise state monopoly over research, mining, enrichment, and reprocessing, industrialization, and trade of nuclear ore and their byproducts, complying with the following principles and conditions

a) all nuclear activity within the national territory shall be subject to approval by Congress,

b) under a concession or permission, authorization may be granted for the use of radioisotopes for research and use in medicine, agriculture, industry and like activities,

c) civil liability for nuclear damages does not depend on the existence of fault,

XXIV to organize, maintain and carry out inspection of working conditions,

XXV to establish the areas and conditions for the conduct of gold digging activities in activities in associative form

## 22. Legislative exclusivity

(0) It is incumbent exclusively upon the Union to legislate on

I civil, commercial, penal, procedural, electoral, agrarian, maritime, aeronautical, space, and labor law,

II expropriation,

III civilian and military requisitioning, in the event of imminent danger and in times of war,

IV waters, energy, informatics, telecommunications, and radio broadcasting,

V post service,

VI monetary and measures system, metal certificates and guarantees,

VII policy for credit, foreign exchange, insurance, and transfer of valuables,

VIII foreign and interstate trade,

IX guidelines of the national transportation policy,

X regime of the ports and lake, river, ocean, air, and aerospace navigation,

XI traffic and transportation,

XII mineral deposits, mines, other mineral resources, and metallurgy,

XIII nationality, citizenship, and naturalization,

XIV Indian populations,

XV emigration, immigration, entry, extradition, and expulsion of foreigners,

XVI organization of the national employment system and conditions for practising professions,

XVII. organization of the Judiciary, of the Attorney General's Office and of the Public Defender's Office of the Federal District and of the Territories, as well as the administrative organization thereof;

XVIII national statistical system and mapping and geology system,

XIX systems for savings, as well as obtaining and guaranteeing public savings,

XX consortium and raffle systems;

XXI general organization rules, troops, war materials, guarantees, enlisting, and mobilizing military police forces and military fire brigades;

XXII jurisdiction of the Federal police and of the Federal highway and railway police,

XXIII social security,

XXIV guideline and bases for national education,

XXV public registries,

XXVI nuclear activities of any nature,

XXVII general rules for all kinds of bidding and contracting, for the direct and indirect government administration, including foundations instituted and maintained by the Government, in its different spheres, and companies under its control;

XXVIII territorial defense, aerospace defence, maritime defence, civil defence, and national mobilization,

XXIX commercial advertising,

(1) A supplemental law may authorize the States to legislate on specific questions to the matters listed in this article

## 23. Common Powers

(0) It is incumbent, in common, upon the Union, the States, the Federal District, and the Municipalities

I to ensure that the Constitution, the laws, and the democratic institutions are complied with and that public property is preserved,

II to attend to public assistance and health, as well as to protection and guarantee of handicapped persons,

III to protect documents, works, and other assets of historical, artistic and cultural value, monuments and remarkable natural scenery, as well as archaeological sites,

IV to prevent works of art and other assets of historical, artistic or cultural value from being taken out of the country, destroyed and decharacterized,

V to provide means of access to culture, to education and to science,

VI to protect the environment and fight pollution in any of its forms,

VII to preserve the forests, fauna, and flora,

VIII to foment agricultural and livestock production and organize the supply of food,

IX to promote programs for the construction of housing and the improvement of housing and basic sanitation conditions,

X to fight the causes of poverty and the factors leading to marginal living conditions, promoting integration of the unprivileged sectors,

XI to register, monitor, and supervise concessions of rights to research and exploit hydric and mineral resources within their territories,

XII to establish and implement an educational policy for traffic safety

(1) A supplemental law shall establish rules for cooperation between the Republic and the States, the Federal District and the Municipalities in view of balanced development and well being on a nation wide basis

## **24. Concurrent Legislation**

(0) It is incumbent upon the Union, the States, and the Federal District to legislate concurrently on

I tax, financial, penitentiary, economic, and city planning law,

II the budget,

III commercial registries,

IV costs of forensic services,

V production and consumption,

VI forests, hunting, fishing, fauna, reservation of nature, defense of the soil and natural resources, protection of the environment, and pollution control,

VII protection of historical, cultural, artistic and touristic monuments, including natural scenic beauties,

VIII liability for damages to the environment, to consumers, to assets and rights of an artistic, aesthetic, historical and touristic value, including natural scenic beauties,

IX education, culture, teaching, and sports,

X creation, operation, and proceedings of the small claims courts,

XI court procedure,

XII social security, protection, and defense of health,

XIII legal assistance and public defense,

XIV protection and social integration of handicapped persons,

XV protection of childhood and of youth,

XVI organization, guarantees, rights and duties of the civil police

(1) Within the scope of concurrent legislation, the jurisdiction of the Republic is limited to establishing general rules

(2) The jurisdiction of the Republic to legislate under general rules does not preclude the supplementary jurisdiction of the States

(3) If there is no federal law on general rules, the States exercises full legislative jurisdiction to provide for their peculiarities

(4) The supervenience of a federal law over general rules suspends the effectiveness of a State law, to that extent that it is contrary thereto

### CHAPTER III

## THE FEDERATED STATES

### 25. The States of the Federation

(0) The States are organized and governed by the Constitutions and the laws which they may adopt, with due regard for the principles of this Constitution

(1) To the States is reserved jurisdiction over the matters not forbidden to them by this Constitution

(2) It is incumbent upon the States to operate, directly or through a concession to a state owned company, with exclusive rights of distribution, local services of piped in gas

(3) The States may, by means of a supplemental law, institute metropolitan regions, city agglomerations, and microregions, formed by grouping neighbouring municipalities, in order to integrate the organization, planning and execution of public functions of common interest

### 26. Property of the States

The following are included among the property of the States.

I superficial or underground waters, whether flowing, emerging or in reservoirs, with the exception, in the latter case, as set forth in the law, of those resulting from works carried out by the Republic,

II areas, on ocean and coastal islands, which are under their domain, excluding those under the domain of the Republic, Municipalities, or third parties,

III river and lake islands which do not belong to the Republic,

IV vacant government lands not comprised among those of the Republic

### 27. Composition of Legislative

(0) The number of representatives on the State Legislative Assembly is

three times the representation of the State on the House of Representatives and, when the number attains thirty-six, is increased by as many Representatives as there are Federal Representatives in excess of twelve

(1) The term of the State Representatives is four years, and they are subject to the provisions of this Constitution regarding the electoral system, inviolability, immunities, compensation, loss of office, leave of absence, impairments, and enlisting into the Armed Forces

(2) The compensation of the State Representatives is established, in each legislature for the subsequent legislature, by the Legislative Assembly, with due regard for the provisions of Articles 150 II, 153 III and 153 (2) I

(3) It is incumbent upon the Legislative Assemblies to provide on their internal regulations, police and administrative services of their secretariat, and to fill the respective offices

(4) The law provides for public initiative in State legislative proceedings

## **28. Executive branch**

(0) The election of the State Governor and Vice Governor, for a term of office of four years, is held ninety days before the end of their predecessors' term of office, and they take office on January 1st of the subsequent year, observing, otherwise, the provisions of Article 77

(1) A Governor who assumes another office or function of direct or indirect Government administration loses his office, except for offices taken by virtue of a public competitive examination and observing the provisions of Article 38 I, IV, and V

## **CHAPTER IV THE MUNICIPALITIES**

### **29. The Municipalities**

Municipalities are governed by organic law, voted in two rounds, with a minimum interval of ten days between each voting, and approved by two-thirds of the members of the City Council, which shall enact it, complying with the principles established in this Constitution and in the Constitution of the respective State and with the following precepts

I election of the Mayor, of the Vice-Mayor, and of the City Councilmen, for a term of office of four years, through direct and simultaneous elections held throughout the entire country,

II elections of the Mayor and of the Vice-Mayor at least ninety days before the end of the term of office of those who are to be succeeded, subject to the provisions of Article 77 in the event of municipalities with more than two hundred thousand voters,

III investiture of the Mayor and of the Vice-Mayor on January 1st of the year subsequent to the year of election,

IV a number of City Councilmen in proportion to the population of the Municipality, observing the following limits

a) a minimum of nine and a maximum of twenty-one in Municipalities with up to one million inhabitants,

b) a minimum of thirty-three and a maximum of forty-one in Municipalities with over one million and under five million inhabitants,

c) a minimum of forty-two and a maximum of fifty-five in Municipalities with over five million inhabitants,

V compensation of the Mayor, of the Vice-Mayor, and of the Councilmen established by the City Council in each legislature for the subsequent one, with due regard for the provisions of Articles 37 XI, 150 II, 153 III, and 153 (2) I,

VI inviolability of City Councilmen for their opinions, words, and votes while in office and within the jurisdiction of the Municipality,

VII prohibitions and incompatibilities, while in the office of City Councilmen, similar, where applicable, to the provisions of this Constitution for members of Congress and, of the Constitution of the respective State, for members of the Legislative Assembly,

VIII trial of the Mayor before the Court of Appeals,

IX organization of the legislative and supervisory functions of the City Council,

X cooperation of representative associations in municipal planning,

XI public initiative in bills of law of specific interest to the Municipality, the city or the districts, through the manifestation of at least five per cent of the voters,

XII loss of the office of Mayor according to Article 28 (1)

### 30. Municipal of Self Government

It is incumbent upon the Municipalities

I to legislate on matters of local interest,

II to supplement federal and state legislation where applicable,

III to institute and collect the taxes coming under their jurisdiction, as well as apply their revenues, regardless of the obligation to render accounts and public trial balance sheets within the periods established by law,

IV to create, organize, and suppress districts, with due regard for state legislation,

V to organize and render either directly or by concession or permission, essential public services of local interest, including collective transportation,

VI to maintain with the technical and financial cooperation of the Republic and State, pre-school education and elementary school programs,

VII to render, with the technical and financial cooperation of the Republic and State, health services to the population,

VIII to promote, where applicable, adequate land ordainment through planning and control of use, apportionment, and occupation of the city soil,

IX to promote the protection of local historical cultural monuments, with due regard for federal and state legislation and supervision

### **31. Supervision**

(0) Supervision of the Municipality is exercised by the Municipal Legislative Branch, through outside control, and by the internal control systems of the Municipal Executive Branch, as set forth in the law

(1) Outside control of the City Council is exercised with the assistance of the Audit Courts of the State or Municipality or of the Audit Councils or Courts of the Municipalities, whenever existing

(2) The prior opinion, issued by the proper agency, on the accounts to be rendered by the Mayor annually, shall only not prevail by a decision of two thirds of the members of the City Council

(3) The accounts of the Municipalities remain each year available to any taxpayer for sixty days, for examination and evaluation, and any taxpayer may question their legitimacy according to the law

(4) The creation of new Municipal Audit Courts, Councils, or agencies is forbidden after the promulgation of this Constitution

## **CHAPTER V**

### **THE FEDERAL DISTRICT AND THE TERRITORIES**

#### **Section I—The Federal District**

### **32. The Federal District Government**

(0) The Federal District, which may not be divided into Municipalities, is governed by an organic law, voted in two rounds with a minimum interval of ten days, and approved by two thirds of the Legislative House, which enact it, complying with the principles established in this Constitution

(1) The legislative jurisdiction reserved to the States and Municipalities is attributed to the Federal District .

(2) The election of the Governor and of the Vice Governor, with due regard for the provisions of Article 77, and of the District Representatives shall coincide with that of the State Governors and Representatives, for a term of office of the same duration

(3) The provisions of Article 27 apply to the District Representatives and to the Legislative Assembly

(4) A Federal law shall provide for the use, by the Government of the Federal District, of the civil and military police and of the military fire brigade

## Section II—The Territories

### 33. The Territories of the Republic

(0) The law provides for the administrative and judicial organization of the Territories

(1) The Territories may be divided into Municipalities, which shall be subject, when applicable, to the provisions of Chapter IV of this Title

(2) The accounts of the Government of a Territory are submitted to Congress, with the prior opinion of the Audit Tribunal of the Union

(3) In Federal Territories with over one hundred thousand inhabitants, besides the Governor appointed according to this Constitution, there shall be judicial bodies of first and second instances, members of the Attorney General's Office, and federal public defenders, the law shall provide for the elections of the Territory House and its decision making authority

## CHAPTER VI INTERVENTION

### 34. Federal Intervention on States and Federal District

The Republic may not intervene in the States or in the Federal District, except to.

I maintain national integrity,

II fight back a foreign invasion or invasion of one unit of the Federation in another,

III put an end to a serious jeopardy to public order,

IV guarantee the free exercise of any of the Branches in the units of the Federation,

V reorganize the finances of a unit of the Federation which

a) suspends payment of a consolidated debt for more than two consecutive years, except in the event of force majeure,

b) fails to deliver to the Municipalities tax revenues established in this Constitution, within the periods of time established by law,

VI provide for the enforcement of a federal law, court order, or decision,

VII ensure compliance with the following constitutional principles

a) republican form, representative system, and democratic regime,

b) the rights of the individual,

c) municipal autonomy,

d) rendering of accounts of the direct and indirect government administration

### 35. Intervention in a Municipality

The State may not intervene in its Municipalities, and neither the Republic in the Municipalities located in a Federal Territory, unless

I the consolidated debt is not paid for two consecutive years, except for reasons of force majeure,

II. the proper accounts are not rendered, according to the law,

III the minimum required amount of municipal revenues has not been applied in the maintenance and development of education,

IV the Court of Appeals grants a petition to ensure compliance with principles indicated in the State Constitution or for enforcement of a law, court order or decision

### 36. Rules of Procedure

(0) A decree of intervention shall depend

I in the event of Article 34 IV, on a request from the coerced or impeded Legislative or Executive, or in a requisition from the Federal Supreme Court, if the coercion is exerted against the Judiciary,

II in the event of a court order or decision, on a requisition from the Federal Supreme Court, the Superior Court of Appeals, or the Superior Electoral Court,

III on the Federal Supreme Court granting a petition from the Attorney General of the Republic, in the event of Article 34 VII,

IV on the Superior Court of Appeals granting a petition from the Attorney General of the Republic, in the case of refusal to enforce a federal law

(1) The decree of intervention, which shall specify the extent, the period and the conditions of enforcement and which, if applicable, shall appoint the intervenor, shall be submitted to review by Congress or the State Legislative Assembly within twenty four hours

(2) If Congress or the Legislative Assembly are not in session, an extraordinary session shall be called within the same twenty four hours

(3) In the events of Article 34 VI and VII, or of Article 35 VI, upon waiver of review by Congress or by the Legislative Assembly, the decree shall be limited to staying execution of the challenged act, if such measure is sufficient to restore normality

(4) When the reasons for the intervention cease, the authorities removed from their offices shall return to them, unless there is a legal impediment

## CHAPTER VII

### PUBLIC ADMINISTRATION

#### Section I—General Provisions

### 37. General Basis

(0) The direct or indirect government administration of any of the Branches of the Republic of the States, of the Federal District and of the Municipalities, as well as any of their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, and also the following

I public offices, positions, and functions are accessible to Brazilians who satisfy the requirements established by law,

II investiture in a public office or position depends on prior approval in a public competitive examination of tests or of tests and titles, except for appointment to a commission office declared by law to be free for appointment and discharge,

III the period validity of a public examination is up to two years, extendable once for a like period,

IV during the unextendable period set forth in the public call notice, a person approved in a public competitive examination of tests or of tests and titles shall be called, with priority over new approved applicants, to assume an office or position in the career,

V commission offices and bonafide functions are exercised preferentially, by civil servants holding a technical or professional career office, in the events and on the conditions set forth in the law,

VI civil servants are assured of the right to free union association,

VII the right to strike is exercised under the terms and within the limits defined in a supplemental law,

VIII the law reserves a percentage of public offices and positions for handicapped persons and defines the criteria for hiring them;

IX the law establishes the cases of hiring a given person for a period of time in order to attend to a temporary need of exceptional public interest,

X general review of the compensation of government employees, without distinction of indices between civil and military servants, shall always take place on the same date,

XI the law establishes the maximum limit and proportion between the highest and lowest compensation of government employees, observing, as maximum limits and within the sphere of respective authority, the amounts received as any kind of compensation, in legal tender, by members of Congress, Ministers of State, and Justices of the Federal Supreme Court and the corresponding offices in the States, Federal District, and Territories, and in the Municipalities, the amounts received as compensation, in legal tender, by the Mayor,

XII the compensation for the offices of the Legislative and of the Judiciary may not be higher than the compensation paid for the Executives,

XIII it is forbidden to link or equalize salaries, for purposes of compensating personnel in the public service, excepting the provisions of the preceding item and of Article 39 (1),

XIV pecuniary raises received by a government employee is not computed or accumulated, for purposes of granting subsequent raises, on the same account or on an identical basis,

XV the salaries of civil and military servants are irreducible and their compensation shall comply with the provisions of Articles 37 XI, XII, 150 II, 153 III, and 153 (2) I,

XVI. remunerated accumulation of public offices is forbidden, except, when the working hours are compatible

a) of two positions of teacher,

b) of one position of teacher with another technical or scientific position,

c) of two exclusively medical positions,

XVII the accumulating prohibition extends to positions and functions and includes autonomous governments entites, public companies, mixed capital companies, and foundations maintained by the Government,

XVIII the financial administration and its fiscal servants shall, within their spheres of authority and jurisdiction, enjoy precedence over the other administration sectors, as set forth in the law,

XIX a public company, a mixed capital company, an autonomous government entity or a public foundation may only be organized through a specific law,

XX the organization of subsidiaries of the entites mentioned in the preceding item requires legislative authorization in each case, as also participation by any of them in a private company,

XXI except for the cases specified in the law, public works, services, purchases, and disposals shall be contracted by public bidding, ensuring equal conditions to all bidders, with clauses that establish payment obligations, maintaining the effective conditions of the bid, according to the law, which shall only allow requirement of technical and economic qualifications essential to secure performance of the obligations.

(1) The publicity of government agencies acts, programs, public works, services, and campaigns shall be of an educational, informative, or social orientation character, and may not include names, symbols, or images representing personal promotion of government authorities or employees

(2) Non compliance with the provisions of items II and III results in nullity of the act and punishment of the responsible authority, according to the law

(3) Complaints relating to the rendering of public services are regulated by law

(4) Acts of administrative dishonesty result in suspension of political rights, loss of public office, prohibition to transfer personal property an reimbursement to the Public Treasury, in the manner and grading set forth in the law, without prejudice to the applicable criminal action

(5) The law establishes the statute of limitations for unlawful acts performed by any agent, whether or not a civil servant, which cause losses to the Public Treasury, regardless of the respective claims for reimbursement

(6) Public entities and private entities rendering public services are liable for the damages caused to third parties, by their agents, in such capacity, ensuring the right of recourse against the liable agent in cases of intent or fault

### 38. Servants and Representatives

The following provisions apply to a civil servant exercising an elective office

I in the case of a Federal, State, or District elective office, he shall leave his office, position or function;

II if vested in the office of Mayor, he is removed from the office, position, or function, and he may opt for the respective compensation,

III if vested in the office of City Councilman, and if the working hours are compatible, he receives the benefits of his office, position, or function, without prejudice to compensation for the elective office, and, if there is no such compatibility, the provisions of the preceding item apply,

IV in any case requiring leave of absence for the exercise of an elective office, his period of service is counted for all legal purposes, except for promotion by merit,

V for purposes of social security benefits, in the case of leave of absence, the amounts are determined as if he were in activity

## Section II—Civil Servants

### 39. Civil Servants Regime

(0) The Republic, the States, the Federal District, and the Municipalities institute, within their jurisdiction, a sole juridical regime and career plans for the servants of the direct Government administration, of autonomous Government entities, and of public foundations

(1) The law ensures, to direct administration servants, equal salaries for offices with equal or similar duties in the same Branch or between servants of the Executive, Legislative, and Judiciary Branches, except for individual advantages and those relative to work nature or location

(2) The provisions of Article 7 IV, VI, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, and XXX apply to the servants

### 40. Retirement

(0) A civil servant goes into retirement

I for permanent disability, the pension being full when such disability results from a work accident, a professional disease or a serious, contagious or incurable illness, as specified by law, and being proportional in all other cases;

II compulsorily, at seventy years of age, with a pension proportional to the period of service,

**III voluntarily.**

a) upon thirty-five years of service, if a man, and upon thirty years, if a woman, with full pay;

b) upon thirty years of actual teaching activity, if a man, and twenty-five, if a woman, with full pay,

c) upon thirty years of service, if a man, and upon twenty-five, if a woman, with pay in proportion to this period,

d) at sixty-five years of age, if a man, and at sixty, if a woman, with pay proportional to the period of service

(1) A supplemental law may establish exceptions to the provisions of item II a) and c), in the case of work considered hard, unhealthy, or dangerous

(2) The law shall provide for retirement in temporary offices or positions

(3) The period of Federal, State, or Municipal Government service is computed in full for purposes of retirement and of disengagement

(4) Retirement pension are reviewed, in the same proportion and on the same date, whenever there is a change in the compensation of servants in activity, and any benefits or advantages subsequently granted to servants in activity shall also be extended to retirees, including those resulting from transformation or reclassification of the office or function from which they retired, as set forth in the law

(5) The benefit of pension for death has to correspond to the full amount of compensation or earnings of the deceased servant, up to the limit established by law, with due regard for the provisions of the preceding paragraph

**41. Tenure**

(0) Servants appointed by virtue of a public examination acquire tenure after two years of actual service

(1) A tenured civil servant only loses his or her office by virtue of a final and unappealable court decision or by means of administrative proceedings in which he or she is assured of full defense

(2) If the dismissal of a tenured servant is voided by a court decision, he or she has to be reinstated and any holder of the vacancy to be taken back to the original office without the right to indemnity, placed in another office or disengaged

(3) Upon extinction of an office or declaration of its redundancy, a tenured servant shall remain on paid disengagement until his or her adequate placement in another office

**Section III—Military Public Servants****42. Military Servants**

(0) Members of the Armed Forces are federal military servicemen, and those of the State troops and of the military fire brigades are military servicemen of the respective States, of Territories and of the Federal District

(1) The ranks, with the prerogatives, rights, and duties inherent to them, are ensured fully to the officers in active service, those of the reserve or in retirement, of the Armed Forces, of the State troops and of the military fire brigade of the States, Territories and Federal District, and they have exclusive rights to military titles, posts and uniforms

(2) The ranks of officers of the Armed Forces are awarded by the President of the Republic and those of officers of the State troops and military fire brigades of the States, Territories, and Federal District, by their respective Governors

(3) A member of the Armed Forces in active service is transferred to the reserve if he accepts a permanent civil public office

(4) A member of the Armed Forces in active service who accepts a temporary public office, position, or function, which is not elective, even in the indirect administration, shall be put on leave, and, as long as he remains in this situation, he may only be promoted through seniority, and his period of service shall be counted only for that promotion and for transfer to the reserve, and, after two years away from active service, whether continuous or not, he shall be retired

(5) Servicemen are forbidden to join trade unions and to strike

(6) While in actual service, a servicemen may not belong to political parties

(7) An officer of the Armed Forces only loses his post and rank if he is judged unworthy of or incompatible with the dignity of being an officer, by decision of a permanent military court, in times of peace, or of a special martial court, in times of war

(8) An officer sentenced through a final and unappealable judgement in a common or military court to imprisonment for more than two years, is submitted to the trial set forth in the preceding paragraph

(10) The law provides for the age limits, tenure, and other conditions of transfer of servicemen into retirement

(11) The provisions of Article 40 (4) and (5) apply to the servicemen referred to in this article and to their pensioners

(12) The provisions of Article 7 VIII, XII, XVII, XVIII, and XIX apply to the servicemen referred to in this Article

### Section IV—The Regions

#### 43. Administrative Regions of the Republic

(0) For administrative purposes, the Republic may coordinate its action in one same social and geoeconomic complex, seeking to achieve its development and to reduce regional differences

(1) A supplemental law provides for

I the conditions for the integration of developing regions,

II the composition of the regional organizations which shall carry out, as set forth in the law, the regional plans included in the national economic and social development plans and approved together with same

(2) Regional incentives include, besides others, as set forth in the law

I equal tariffs, freight, insurance, and other cost and price items which are the responsibility of the Government,

II favoured interest rates for financing of priority activities,

III exemptions, reductions, or temporary deferment of federal taxes due by individuals or by legal entities,

IV priority in the economic and social use of rivers and dammed or damnable water masses in low income regions subject to periodical droughts

(3) In the areas referred to in paragraph (2) IV, the Republic shall grant incentives for the recovery of arid lands and shall cooperate with small and medium sized rural owners in implementing water sources and small scale irrigation in their tracts of land

## TITLE IV

### THE ORGANIZATION OF THE POWERS

#### CHAPTER I

#### THE LEGISLATIVE POWER

##### Section I—The National Congress

#### 44. Federal Legislative Branch

(0) The Legislative Authority of the Republic is exercised by the National Congress, which is composed of the House of Representatives and of the Federal Senate

(1) Each legislature has a duration of four years

#### 45. House Composition

(0) The House of Representatives is formed by representatives of the people, elected by the proportional system in each State, in each Territory and in the Federal District

(1) The total number of Representatives, as well as the representation per State and for the Federal District, is established by a supplemental law in proportion to the population, the necessary adjustments to be made in the year preceding the elections, so that none of those units of the Federation has less than eight or more than seventy Representatives

(2) Each Territory elects four Representatives

#### **46. Representation in the Senate**

(0) The Federal Senate is composed of members representing the States and the Federal District, elected by majority vote.

(1) Each State and the Federal District shall elect three Senators with term of office of eight years

(2) One-third and two-thirds of the representation of each State and of the Federal District are renewed every four years, alternately

(3) Each Senator is elected with two alternates

#### **47. Deliberative Quorum**

Unless otherwise established in this Constitution, the resolutions of each Chamber of Congress and of its Committees are adopted by a majority vote with the attendance of the absolute majority of its members

### **Section II—Powers of the National Congress**

#### **48. Legislative Powers**

It is incumbent upon Congress, with the sanction of the President of the Republic, which sanction shall not be required in the events specified in Articles 49, 51, and 52, to provide for all the matters within the jurisdiction of the Republic and especially on

I system of taxation, collection, and income distribution,

II pluriannual plan, budgetary directives, annual budget, credit transactions, public debt, and issue of money,

III establishment and modification of the number of troops of the Armed Forces,

IV national, regional, and sectorial development programs and plans,

V boundaries of the national territory, air, and maritime space and property owned by the Republic,

VI incorporation, subdivision, or splitting of areas of Territories or States, after hearing the respective Legislative Assemblies,

VII temporary transfer of the seat of the Federal Government,

VIII granting of amnesty,

IX the administrative organization, judicial organization, Attorney General's Office organization, and Public Defender's office organization of the Republic and of the Territories, and the judicial organization, Attorney General's Office organization and Public Defender's Office organization of the Federal District,

X creation, transformation, and extinction of public offices, positions, and functions,

XI creation, structuring, and responsibilities of the Ministries and Government administration agencies,

XII telecommunications and radio broadcasting,

XIII financial, foreign exchange, and monetary matters, financial institutions and their operations,

XIV. currency, currency issuance limits, and amount of Federal indebtedness

#### **49. Exclusive Functions**

It is exclusively incumbent upon Congress

I to resolve conclusively on international acts, agreements, or treaties which involve charges or commitments against the national patrimony,

II to authorize the President of the Republic to declare war, to make peace, to allow foreign forces to go through the national territory, or remain therein temporarily, except for the cases set forth in a supplemental law,

III to authorize the President and the Vice President of the Republic to leave the country, when such absence exceeds fifteen days,

IV to approve a state of defense and federal intervention, authorize a state of siege, or suspend any of these measures,

V to stay normative acts of the Executive Branch which exceed the regulamentary authority or the limits of the legislative delegation of powers,

VI to temporarily transfer its seat,

VII to establish identical compensation for Federal Representatives and Senators, in each legislature, for the subsequent one, with due regard for the provisions of Articles 150 II, 153 III, and 153 (2) I,

VIII to establish for each fiscal year the compensation of the President and of the Vice President of the Republic and of the Ministers of State, with due regard for the provisions of Articles 150 II, 153 III, and 153 (2) I,

IX to each year examine the accounts rendered by the President of the Republic and evaluate the reports on the execution of Government plans,

X to supervise and control, directly or through the Federal Senate and/or the House of Representatives, the acts of the Executive, including those of the indirect administration,

XI to ensure the preservation of its legislative authority in view of the normative responsibility of the other Branches,

XII to evaluate acts of concession and renewal of concession of radio and television stations,

XIII to choose two-thirds of the members of the Audit Tribunal of the Union,

XIV to approve initiatives of the Executive Branch regarding nuclear activities,

XV to authorize a referendum and to call a plebiscite,

XVI to authorize, in Indian lands, the exploitation and use of hydric resources, and prospecting and mining of mineral resources,

XVII to give its prior approval for the disposal or concession of public lands with an area of over two thousand and five hundred hectares

#### 50. Calling Officers for explanations

(0) The House of Representatives or the Federal Senate, as well as any of their Committees, may call upon a Minister of State to personally render information on a pre determined matter, and his absence without adequate justification shall constitute a criminal malversion

(1) The Ministers of State may attend the Federal Senate, the House of Representatives, or any of their Committees, on their own initiative and by agreement with the respective Presiding Board, to report on a matter relevant to their Ministry.

(2) The Presiding Board of the House of Representatives and of the Federal Senate may forward written requests for information to the Ministers of State, and refusal or non compliance with such request within a period of thirty days, as well as the rendering of false information, shall constitute a criminal malversion

### Section III—House of Representatives

#### 51. Exclusive Authority

It is exclusively incumbent upon the House of Representatives

I to authorize, by two-thirds of its members, the institution of legal action against the President and Vice President of the Republic and the Ministers of State,

II to take the accounts of the President of the Republic, when they are not submitted to Congress within sixty days of opening of the legislative session,

III to prepare its internal regulations,

IV to provide for its organization, operation, police, creation, transformation, or extinction of offices, positions, and functions of its services and establishment of the respective compensation, observing the guidelines established in the budget directives law,

V to elect the members of the Council of the Republic, according to Article 89 VII

**Section IV—Federal Senate****52. Exclusive Powers**

(0) It is incumbent exclusively upon the Federal Senate

I to sue and try the President and Vice-President of the Republic for criminal malversion and the Ministers of State for crimes of the same nature connected therewith,

II to sue and try the Justices of the Federal Supreme Court, the Attorney General of the Republic and the Advocate General of the Republic for criminal malversion,

III to give its prior approval, by secret ballot, after public hearing, on the selection of.

a) Judges, in the cases established in this Constitution,

b) Justices of the Audit Tribunal of the Union appointed by the President of the Republic,

c) Governor of a Territory,

d) President and Directors of the Central Bank,

e) Attorney General of the Republic,

f) holders of other offices as determined by the law,

IV to give its prior approval, by secret ballot, after closed hearing, on the selection of the heads of permanent diplomatic missions,

V to authorize foreign transactions of a financial nature, of interest to the Republic, the States, the Federal District, the Territories and the Municipalities,

VI to establish, as proposed by the President of the Republic, aggregate limits for the amount of the consolidated debt of the Republic, the States, the Federal District and the Municipalities,

VII to provide for the aggregate limits and conditions for foreign and domestic credit transactions of the Republic, the States, the Federal District and the Municipalities, of their autonomous Government entities, and other entities controlled by the Federal Government,

VIII to provide for the limits and conditions for the Republic to render its guarantee in foreign and domestic credit transactions,

IX to establish aggregate limits and conditions for the amount of debt of the States, the Federal District and the Municipalities,

X to stay the application, in full or in part, of a law declared unconstitutional by final decision of the Federal Supreme Court,

XI to approve, by absolute majority and by secret ballot, the removal from office of the Attorney General of the Republic before the end of his term of office,

XII to draw up its internal regulations,

XIII to provide for its organization, operation, police, creation, transformation, or extinction of offices, positions, and functions of its services and to determine the respective compensation, with due regard for the guidelines established in the budget directives law,

XIV to elect the members of the Council of the Republic pursuant to Article 89 VII

(1) In the events set forth in Items I and II, the Chief Justice of the Federal Supreme Court acts as President, and the sentence, which may only be rendered by two-thirds of the Federal Senate, is limited to loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to other applicable judicial sanctions

### Section V—Representatives and Senators

#### 53. Inviolability, Immunity

(0) The Representatives and Senators enjoy inviolability regarding their opinions, words, and votes

(1) From the date of investiture, the members of Congress may not be arrested, except in flagrante delicto of a crime not entitled to bail, nor may they be criminally sued, without prior authorization from the respective Chamber of Congress

(2) Denial of the request for authorization or the absence of a resolution suspends the statute of limitations for the duration of the term of office

(3) In the event of flagrante delicto of a crime not entitled to bail, the case record has to be sent within twenty-four hours to the respective Chamber of Congress, which, by secret ballot of a majority of its members, shall resolve on the arrest and authorize or not the determination of criminal liability

(4) The Representatives and Senators are judged by the Federal Supreme Court

(5) The Representatives and Senators are not required to render testimony on information received or rendered by virtue of the exercise of their term of office nor against the persons who rendered them information or those who received information from them

(6) The enlistment of Representatives and Senators into the Armed Forces, even if they are servicemen and even in times of war, depends upon prior authorization from the respective Chamber of Congress

(7) The immunities of Representatives or Senators subsists during a state of siege, and may only be suspended by the vote of two-thirds of the members of the respective Chamber of Congress, in the event of acts performed outside the premises of Congress, which are incompatible with the implementation of such measure

#### 54. Forbidden Actions

Representatives and Senators shall not

I as from the date of issue of the certificates

a) execute or maintain a contract with a public entity, an autonomous Government entity, a State owned company, a mixed capital company or a public utility company, unless the contract complies with uniform clauses,

b) accept or hold a remunerated office, function or job, including those which may be terminated "ad nutum", in the entities listed in the preceding item;

II as from taking of office

a) be the owners, controllers, or directors of a company which enjoys a privilege as a result of a contract with a public entity or perform a remunerated function therein,

b) hold an office or a function subject to termination "ad nutum" in the entities referred to in Item I a),

c) advocate a cause in which any of the entities referred to in Item I a), have an interest,

d) be the holder of more than one public elective position or office

## **55. Cassation of Mandate**

(0) A Representative or Senator loses his or her office

I if he or she infringes upon any of the prohibitions established in the preceding article,

II if his or her conduct is declared to be incompatible with parliamentary decorum,

III. if he or she fails to attend, during each legislative term, one-third of the ordinary sessions of his or her Chamber of Congress, except for a leave of absence or a mission authorized by such Chamber of Congress,

IV if he or she loses or suffers suspension of his or her political rights,

V whenever decreed by the Electoral Courts, in the events set forth in this Constitution,

VI if he or she is criminally convicted by a final and unappealable sentence

(1) Abuse of the prerogatives ensured to members of Congress or receipt of undue advantages, besides such cases as are defined in the internal regulations, is incompatible with parliamentary decorum

(2) In the events of Items I, II and VI, loss of office is decided by the House of Representatives or by the Federal Senate, by secret ballot and absolute majority, on the initiative of the respective Presiding Board or of a political party represented in Congress, full defense being ensured

(3) In the events set forth in Items III to V, the loss is declared by the Presiding Board of the respective Chamber of Congress *ex officio* or on the initiative of any of its members, or of a political party represented in Congress, full defense being ensured

## **56. No Cassation of Mandate**

(0) A Representative or Senator does not lose his or her office if

I he or she is vested in an office of Minister of State, Governor of a Territory, Secretary of a State, of the Federal District, or of a Territory, Mayor of a State Capital or head of a temporary diplomatic mission,

II he or she is on leave of absence from the respective Chamber of Congress by virtue of illness, or to pursue, without compensation, a private matter, provided that, in this case, the absence does not exceed one hundred and twenty days per legislative term

(1) The alternate is called in cases of vacancy, of investiture in the functions set forth in this article, or of leave of absence exceeding one hundred and twenty days

(2) If a vacancy occurs and there is no alternate, an election has to be held to fill the vacancy if more than fifteen months remain, before the end of the term of office

(3) In the event of Item I, the Representative or Senator may opt for compensation of the elected office

### Section VI—Sessions

#### 57. Meetings

(0) Congress meets each year in the Federal Capital, from February 15th to June 30th and from August 1st to December 15th

(1) If sessions scheduled for these dates fall on a Saturday, a Sunday or a holiday, such meetings is transferred to the immediately subsequent business day

(2) A legislative term is not interrupted without approval of the bill for the budget directives law.

(3) In addition to other cases set forth herein, the House of Representatives and the Federal Senate meets in a joint session to.

I inaugurate the legislative term;

II draw up the regulations and regulate the creation of services common to both Chambers of Congress,

III take the oath of the President and Vice President of the Republic,

IV acknowledge a veto and resolve thereon

(4) The House of Representatives and the Federal Senate meet in preparatory sessions, as from February 1st, in the first legislative year, for the inauguration of its members and election of the respective Presiding Boards, for a term of office of two years, re-election to the same office in the immediately subsequent election being prohibited.

(5) The Presiding Board of joint Congress sessions is presided over by the President of the Federal Senate, and the remaining offices are held, alternately, by the occupants of equivalent offices in the House of Representatives and in the Federal Senate

(6) Congress is called for an extraordinary session

I by the President of the Federal Senate, in the event of decree of a state of defense or Federal intervention, of a request for authorization to decree a state of siege, and for the President and the Vice President of the Republic to take their oaths and offices,

II by the President of the Republic, by the Presidents of the House of Representatives and of the Federal Senate, or at the request of a majority of the members of both Chambers of Congress in the event of urgency or relevant public interest

(7) In an extraordinary legislative session, Congress only conducts the business for which it was called

## Section VII—Committees

### 58. Constitution of Committees

(0) Congress and its two Chambers have permanent and temporary Committees, which are formed in the manner and with the duties set forth in the respective regulations or in the act determining the creation thereof

(1) In forming the Presiding Boards and each committee, proportional representation of the political parties or of the parliamentary groups which participate in the respective Chamber of Congress shall be ensured to the extent possible.

(2) It is incumbent upon the committees, based upon the subject of their authority

I to discuss and vote on bills of law which, in accordance with the regulations, are not within the authority of the Plenary, except in the event of appeal by one tenth of the members of one of the Chambers of Congress,

II to hold hearings with entities of society,

III to call Ministers of State to render information on matters inherent to their duties,

IV to receive petitions, claims, statements, or complaints from any person against acts or omissions of Government authorities or entities,

V to request the deposition of any authority or citizen,

VI to examine construction work programs and national, regional, and sectorial development plans and issue opinions thereon

(3) Parliamentary investigation committees, which shall have the investigation powers inherent to the judicial authorities, in addition to other powers set forth in their respective regulations, are created by the House of Representatives and by the Federal Senate, jointly or severally, at the request of one-third of its members, for investigation of a certain fact and for a certain period of time, and their conclusions shall, if necessary, be forwarded to the Attorney General's Office to determine the civil or criminal liability of the offenders

(4) During recess there is a Standing Committee to represent Congress, elected by its two Chambers at the last ordinary session of the legislative term, with duties defined in the common regulations, the composition of which shall, to the extent possible, reflect the proportional representation of the political parties in Congress

**Section VIII—Legislative Procedure****Sub-section 1—General Provisions****59. Laws**

(0) Legislative procedure includes the preparation of

I amendments to the Constitution,

II supplemental laws,

III statutory laws,

IV delegated laws,

V provisional measures,

VI legislative decrees,

VII resolutions

(1) A supplemental law provides for the preparation, drafting, amendment, and consolidation of laws

**Sub-section II—Amendments to the Constitution****60. Amendment of the Constitution**

(0) The Constitution may be amended on the proposal of

I at least one-third of the members of the House of Representatives or of the Federal Senate,

II the President of the Republic,

III more than one-half of the Legislative Assemblies of the units of the Federation, each of which express itself by a simple majority of its members

(1) The Constitution may not be amended during federal intervention, state of defense or state of siege

(2) The proposal is discussed and voted in each Chamber of Congress, in two rounds, and it is considered approved if it obtains three-fifths of the votes of the respective members in both rounds

(3) An amendment to the Constitution is enacted by the Presiding Boards of the House of Representatives and of the Federal Senate, with a respective sequence number

(4) No resolution is discussed concerning an amendment proposal which tends to abolish

I the federative form of the State,

II the direct, secret, universal, and periodic vote,

III the separation of the Government Branches,

IV individual rights and guarantees

(5) The subject dealt with in an amendment proposal that is rejected or considered impaired cannot be the subject of another proposal in the same legislative term

**Sub-section III—The Laws****61. Law-making procedure**

(0) The initiative of supplemental laws and statutory laws is incumbent upon any member of Committees of the House of Representatives, of the Federal Senate or of Congress, upon the President of the Republic, the Federal Supreme Court, the Superior Courts, the Attorney General of the Republic, and the citizens, in the manner and events set forth in this Constitution

(1) The initiative of the following laws is incumbent solely upon the President of the Republic:

I laws which determine or modify the number of troops in the Armed Forces,

II. laws which deal with

a) creation of public offices, functions, or positions in the direct administration and in autonomous Government entities, or increase in the compensation thereof,

b) administrative and judicial organization, tax, and budgetary matters, public services, and administrative personnel of the Territories,

c) Government employees of the Republic and Territories, their legal treatment, appointment to offices, tenure and retirement of civil servants, retirement, and transfer of servicemen to inactivity,

d) organization of the Attorney General's Office and of the Public Defender's Office of the Republic, as well as general rules for the organization of the Attorney General's Office and of the Public Defender's Office of the States, the Federal District and the Territories,

e) creation, structuring, and duties of the Ministries and Government administration agencies

(2) Public initiative may be exercised by presentation to the House of Representatives of a bill of law subscribed by at least one percent of Brazilian voters, distributed throughout at least five States, with no less than three tenths per cent of the voters of each of these States

**62. Provisional Measures**

(0) In relevant and urgent cases, the President of the Republic may adopt provisional measures with the force of law and shall submit such measures to Congress immediately. If Congress is in recess, an extraordinary session shall be called within five days

(1) Provisional measures lose their effectiveness as from the date of their issuance if they are not converted into law within a period of thirty days as from their publication, and Congress regulates the legal relations arising therefrom

**63. Expenditure**

An increase in expenditure is not admitted if it is established

I in bills which are the exclusive initiative of the President of the Republic, except for the provisions of Article 166 (3) and (4),

II in bills on the organization of the administrative services of the House of Representatives, the Federal Senate, the Federal Courts, and the Attorney General's Office

#### 64. Discussion, Voting

(0) The discussion and vote of bills of law which are the initiative of the President of the Republic, of the Federal Supreme Court, and of the Superior Courts commences in the House of Representatives

(1) The President of the Republic may request urgency in the examination of bills of his initiative

(2) If, in the case set forth in the previous paragraph, the House of Representatives and the Federal Senate fail to each, successively, express themselves on the proposition, within up to forty-five days, such proposition is included in the agenda and resolution on other matters are suspended for the proposition to be voted

(3) Amendments of the Federal Senate are examined by the House of Representatives within a period of ten days, with due regard, otherwise, for the provisions of the preceding paragraph

(4) The periods of time set forth in paragraph (2) do not run when Congress is in recess and do not apply to bills for codes

#### 65. Approval, Revision

(0) A bill of law approved by one Chamber of Congress is reviewed by the other in a single discussion and voting round, and, if the reviewing Chamber approves the bill, it is sent for sanctioning or enactment, or if it is rejected, it is dismissed

(1) If a bill is amended, it shall return to the initial Chamber.

#### 66. Sanction and Promulgation

(0) The Chamber of Congress in which voting was concluded sends the bill of law to the President of the Republic, who sanctions it if he consents thereto

(1) If the President of the Republic deems all or part of the bill to be unconstitutional or contrary to public interests, he shall veto it fully or partially within fifteen business days as from the date of receipt and advise the President of the Federal Senate of the reasons for the veto within forty-eight hours

(2) A partial veto only applies to the full text of an article, paragraph, item, or sub-item

(3) After a period of fifteen days has elapsed, silence on the part of the President of the Republic operates as sanctioning

(4) A veto examines in a joint session within thirty days of receipt thereof, and may only be rejected by an absolute majority of the Representatives and Senators by secret ballot

(5) If the veto is not upheld, the bill is submitted to the President of the Republic for enactment

(6) If the period established in paragraph (4) elapses without a resolution, the veto is included in the agenda of the next session, suspending other propositions until final voting thereof, except for the matter referred to in Article 62 (1)

(7) If the law is not enacted by the President of the Republic within forty-eight hours, in the events set forth in paragraphs (3) and (5), the President of the Federal Senate enacts it and, if he fails to do so within the same period, it is incumbent upon the Vice President of the Federal Senate to do so

#### **67. Rejected Drafts**

The subject of a rejected bill of law may only be the subject of a new bill in the same legislative term on the proposal of the absolute majority of the members of any of the Chambers of Congress

#### **68. Delegated Laws**

(0) Delegated laws are drawn up by the President of the Republic who requests delegation from Congress

(1) Acts subject to the exclusive authority of Congress, those subject to the exclusive authority of the House of Representatives or of the Federal Senate, matters reserved for supplemental laws, and legislation on the following shall not be delegated

I organization of the Judicial Branch and of the Attorney General's Office, and the career and privileges of their members,

II nationality, citizenship, and individual, political and electoral rights,

III pluriannual plans, budgetary guidelines, and budgets

(2) Delegation to the President of the Republic is granted by resolution of Congress, which specifies its contents and the terms for performance thereof

(3) If the resolution determines that the bill is examined by Congress, the latter does so by a single ballot without any amendments

#### **69. Supplemental Laws**

Supplemental laws shall be approved by absolute majority

### **Section IX—Accounting, Financial, and Budgetary Control**

#### **70. Parliamentary Control**

(0) Control of the accounts, finances, budgets, operations, and property of the Republic and of the direct and indirect administration entities as to lawfulness, legitimacy, economicalness, application of subsidies, and waiver of revenues is exercised by Congress, by means of external control and through the internal control system of each Branch

(1) Accounts are rendered by any individual or public entity which uses, collects, keeps, manages, or administers public moneys, assets, and values or those for which the Republic is responsible, or which, on behalf of the Republic, assumes obligations of a pecuniary nature

#### 71. External Audit

(0) External control under the responsibility of Congress is exercised with the assistance of the Audit

Tribunal of the Union, which shall

I examine the accounts rendered each year by the President of the Republic, by means of a prior opinion which is prepared within sixty days of receipt thereof,

II evaluate the accounts of the administrators and others who are responsible for public moneys, assets, and values of the direct and indirect administration, including foundations and companies instituted or maintained by the Federal Administration, and the accounts of those who have caused a loss, misplacement, or other irregularity resulting in losses to the public treasury,

III examine, for registration purposes, the lawfulness of acts of any personnel hired in the direct and indirect administration, including foundations instituted and maintained by the Government, excepting appointments to commission offices, as well as the approval of civil and military retirement and pension, except for subsequent benefits which do not alter the legal grounds for such approval,

IV carry out, on its own initiative or the initiative of the House of Representatives, the Federal Senate or a technical or investigation Committee, inspections and audits of an accounting, financial, budgetary, operational, or property nature in the administrative units of the Legislative, Executive, and Judicial Branches and other entities referred to in Item II,

V control the national accounts of supranational companies in whose capital stock the Republic holds a direct or indirect interest, according to the terms established in the acts of incorporation,

VI control the application of any funds transferred by the Republic, under a contract, agreement, arrangement, or other similar instrument, to a State, to the Federal District or to a Municipality,

VII render the information requested by any of the Chambers or any of the respective Committees of Congress concerning accounting, financial, budgetary, operational, and property control and the results of audits and inspections made,

VIII apply to the responsible parties, in the event of illegal expenses or irregular accounts, the sanctions provided for in law, which shall establish, among other penalties, a fine proportional to the damages caused to the public treasury,

IX establish a period for the agency or entity to take the action required for the proper enforcement of the law, if an illegality is determined,

X stay, if not heeded, the performance of the contested act, advising the House of Representatives and the Federal Senate of this decision,

XI inform the proper Branch on any irregularities or abuses determined

(1) In the event of a contract, the action of staying is taken directly by Congress which immediately requests the Executive to take the proper action

(2) In the event that Congress or the Executive does not take the action set forth in the preceding paragraph, within ninety days, a Court decides the matter

(3) Decisions of a Court resulting in the imposition of a debt or fine have the effectiveness of an execution instrument

(4) Each quarter and each year, the Court presents to Congress a report on its activities

## **72. Committee**

(0) The permanent mixed committees referred to in Article 166 (1), may, in view of indications of unauthorized expenses, even if in the form of non programmed investments or of non approved subsidies, request the responsible Government authority to render the necessary explanations within five days

(1) If the explanations are not rendered or if they are considered insufficient, the Committee requests the Court to give the final opinion on the matter within a period of thirty days

(2) If the Court considers the expense to be irregular, the Committee shall, if it believes that the expenditure may cause irreparable damages or serious injury to the public economy, propose to Congress that it be suspended.

## **73. Audit Tribunal of the Union**

(0) The Audit Tribunal of the Union, which is made up of nine Justices, has its seat in the Federal District, has its own staff and has jurisdiction throughout the entire Brazilian territory, and exercises, where appropriate, the duties set forth in Article 96

(1) The Justices of the Audit Tribunal of the Union are appointed among Brazilians who satisfy the following requirements

I more than thirty-five and less than sixty-five years of age,

II moral integrity and unblemished reputation,

III notorious knowledge of the law, accounting, economics, and finances or of government administration,

IV more than ten years of practice or of actual professional activity requiring the knowledge mentioned in the preceding item

(2) The Justices of the Audit Tribunal of the Union are chosen as follows

I one-third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen among auditors and members of the Attorney General's Office at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit,

II two-thirds by Congress

(3) The Justices of the Audit Tribunal of the Union have the same guarantees, prerogatives, impediments, compensation, and privileges as the Justices of the Superior Court of Justice and may only retire with the benefits of the office if they have actually held office for more than five years

(4) An auditor, when replacing a Justice, has the same guarantees and impediments as the Justice and, when exercising other duties of the bench, those of a judge of a Federal Regional Court

#### 74. Internal Control

(0) The Legislative, Executive, and Judicial Branches maintain an integrated system of internal control for the purpose of

I evaluating the achievement of the targets established in the pluriannual plan, the implementation of Government programs, and of the Republic's budgets,

II determining the lawfulness and evaluating the results, as to effectiveness and efficiency, of budgetary, financial, and property administration of the agencies and entities of the Federal administration, as well as of the application of Government funds by private entities,

III exercising control over credit transactions, guarantees, as well as over the rights and assets of the Republic,

IV supporting external control in the performance of its institutional mission

(1) The persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Audit Tribunal of the Union thereof, subject to joint liability

(2) Any citizen, political party, association or trade union has standing under the law to denounce irregularities or illegalities to the Audit Tribunal of the Union

#### 75. Application

(0) The provisions of this section apply, where appropriate, to the organization, composition and control of the Audit Courts of the States and Federal District, and the Audit Courts and Councils of the Municipalities

(1) The State Constitutions provide for the respective Audit Courts, which are made up of seven Council Members

## CHAPTER II

### EXECUTIVE BRANCH

#### Section 1—President and Vice-President of the Republic

##### 76. President, Ministers

The Executive Branch is exercised by the President of the Republic, assisted by the Ministers of State

##### 77. Election

(0) Election of the President and of the Vice-President of the Republic takes place simultaneously, ninety days before the end of the current presidential term of office

(1) Election of the President of the Republic includes election of the Vice-President registered with him

(2) The candidate who, being registered by a political party, obtains an absolute majority of votes, not counting blank or void votes, is considered to be elected as President

(3) If no candidate attains an absolute majority in the first ballot, another election has to be held within twenty days after announcement of the results, the two candidates who obtained the greatest number of votes then compete and the one who obtains a majority of valid votes is considered elected

(4) In the event that, before the second election is held, a candidate dies, withdraws, or is legally impaired, the candidate with the greatest number of votes among the remaining candidates is called

(5) If, in the event of the preceding paragraphs, more than one candidate with an equal number of votes remain in second place, the eldest one is qualified

##### 78. Taking of office, Oath Before Congress

(0) The President and the Vice-President of the Republic takes office in a session of Congress. They take an oath to maintain, defend, and carry out the Constitution, comply with the laws, further the general good of the Brazilian people, sustain the union, integrity, and independence of Brazil

(1) In the event that ten days as from the date scheduled for taking of office, the President or the Vice-President, except for force majeure, has not taken office, such office has to be declared vacant

##### 79. Vice-President

(0) The Vice-President replaces the President in the event of impediment and succeeds him in the event of vacancy

(1) The Vice-President of the Republic, in addition to other duties attributed to him by supplemental laws, assists the President whenever called by the President for special missions

##### 80. Double Vacancy

In the event of impediment of the President and of the Vice-President, or

of vacancy in the respective offices, the President of the House of Representatives, the President of the Federal Senate, and the Chief Justice of the Federal Supreme Court are called successively to exercise the Presidency

#### 81. New Elections, Electoral College

(0) If a vacancy occurs in the offices of President and Vice-President of the Republic, elections are held ninety days after the last vacancy occurred

(1) If the vacancy occurs during the last two years of the President's term of office Congress holds elections for both offices within thirty days after the last vacancy occurred, in accordance with the law

(2) In any of the cases, those elected complete the term of office of their predecessors

#### 82. Term

The term of office of the President of the Republic is four years and he may not be re-elected for the subsequent term {Note The 1997 re-election amendment is in force, but has not yet been included into the ICL-Edition } The term of office commences on January 1st of the year following the year of his election

#### 83. Leaving the Country

The President and the Vice-President of the Republic may not, without authorization from Congress, leave the country for a period of more than fifteen days, subject to loss of office

### Section II—Duties of the President of the Republic

#### 84. Functions

(0) It is incumbent exclusively upon the President of the Republic

I to appoint and dismiss the Ministers of State,

II to exercise, with the assistance of the Ministers of State, the higher management of the Federal administration,

III to commence the legislative procedure, in the manner and in the events set forth in this Constitution,

IV to sanction, enact, and cause the publication of laws, as well as to issue decrees and regulations for the true enforcement thereof,

V to veto bills of law, wholly, or partially,

VI to provide for the organization and operation of the Federal administration, in accordance with the law,

VII to maintain relations with foreign States and to accredit their diplomatic representatives,

VIII to enter into international treaties, conventions and acts, and referendum of Congress,

IX to decree a state of defense and state of siege,

X to decree and enforce Federal intervention,

XI to send a Government message and plan to Congress when the legislative term is opened, describing the country's situation and requesting the action he deems necessary,

XII to grant pardons and reduce sentences, after hearing the entities instituted by law, if necessary,

XIII to exercise supreme command over the Armed Forces, promote its generals, and to appoint them to the offices held exclusively by them,

XIV to appoint, after approval by the Federal Senate, the Justices of the Federal Supreme Court and of the Superior Courts, the Governors of the Territories, the Attorney General of the Republic, the President and Directors of the Central Bank, and other civil servants, when required by law,

XV to appoint, with due regard for the provisions of Article 73, the Justices of the Federal Audit Court,

XVI to appoint Judges in the events established herein and the Advocate General of the Republic,

XVII to appoint members of the Council of the Republic pursuant to Article 89 VII,

XVIII to call and preside over the Council of the Republic and the National Defense Council,

XIX declare war, if authorized by Congress or upon its referendum, whenever this occurs between legislative terms and, under the same conditions, decree full or partial national mobilization,

XX to make peace, if authorized by or upon the referendum of Congress,

XXI to confer decorations and honorary distinctions,

XXII to permit, in the events set forth in supplemental laws, that foreign forces enter the Brazilian territory, or temporarily remain therein,

XXIII to submit to Congress the pluriannual plan, the budget, directives bill of law and the budget proposals set forth in this Constitution,

XXIV to each year render accounts to Congress concerning the previous fiscal year, within sixty days of the opening of the legislative term,

XXV to fill and extinguish Federal Government offices, in accordance with the law,

XXVI to issue provisional measures, with the forces of law, according to Article 62,

XXVII to perform other duties set forth in this Constitution

(1) The President of the Republic may delegate the duties mentioned in Items VI, XII, and XXV, first part, to the Ministers of State, to the Attorney General of the Republic, who shall observe the limitations established in the respective delegations

**Section III—Liability of the President of the Republic****85. Responsibility Crimes**

(0) Those acts of the President of the Republic which contravene the Federal Constitution and contravene especially the following are criminal malversation

I existence of the Republic,

II free exercise of the powers of the Legislative, the Judiciary, the Attorney General's Office, and the Constitutional powers of the units of the Federation,

III. exercise of political, individual, and social rights;

IV internal security of the country,

V honesty in the administration,

VI budgetary law,

VII compliance with the laws and with court decisions

(1) Such crimes are defined in a special law, which establish the rules of procedures and trial

**86. Impeachment**

If charges against the President of the Republic are admitted by two-thirds of the House of Representatives, he is submitted for trial before the Federal Supreme Court for common criminal offenses or before the Federal Senate for criminal malversation.

(1) The President is suspended from his duties

I in common criminal offenses, if the accusation or complaint is received by the Federal Supreme Court,

II in the event of criminal malversation, after proceedings are instituted by the Federal Senate

(2) If, after a period of one hundred and eighty days, trial has not been concluded, suspension of the President ceases without prejudice to the normal progress of the proceedings

(3) In the event of common offenses, the President of the Republic cannot be subject to arrest as long as no sentence is rendered

(4) During his term of office, the President of the Republic may not be held liable for acts outside the performance of his duties

**Section IV—The Ministers of State****87. Ministers**

(0) The Ministers of State are chosen among Brazilians who have attained the age of twenty-one years and who possess political rights.

(1) It is incumbent upon a Minister of State, in addition to other duties established in this Constitution and in the law

I to exercise guidance, coordination, and supervision of the agencies and entities of the federal administration in the area of his authority and

to give his referendum to acts and decrees signed by the President of the Republic,

II to issue instructions for the enforcement of laws, decrees, and regulations,

III to submit to the President of the Republic an annual report on his management of the Ministry,

IV to perform acts pertinent to the duties assigned or delegated to him by the President of the Republic

## **88. Ministries**

The law provides for the creation, structuring, and duties of the Ministries

## **Section V—Council of the Republic and Council of National Defense**

### ***Sub-section I—Council of the Republic***

## **89. The Council of the Republic**

(0) The Council of the Republic is a higher body for consultation by the President of the Republic, and its members are

I the Vice-President of the Republic,

II the President of the House of Representatives,

III the President of the Federal Senate,

IV the majority and the minority leaders of the House of Representatives,

V the majority and the minority leaders of the Federal Senate,

VI the Minister of Justice,

VII six Brazilian born citizens of over thirty-five years of age, two of which appointed by the President of the Republic, two elected by the Federal Senate, and two elected by the House of Representatives, all with a term of office of three years and not eligible for re appointment

## **90 Powers, Necessary Consultation**

(0) It is incumbent upon the Council of the Republic to opine on

I federal intervention, state of defense, and state of siege,

II matters relevant to the stability of the democratic institutions

(1) The President of the Republic may call a State Minister to participate in a Council meeting, when the agenda includes a matter related to the respective Ministry

(2) The organization and operation of the Council of the Republic are regulated by law

### ***Sub-section II—Council of National Defense***

**91. Advisory Body**

(0) The Council of National Defense is the consultation body of the President of the Republic on matters related to national sovereignty and to defense of the democratic State, and the following are its original members

- I the Vice-President of the Republic,
- II the President of the House of Representatives,
- III the President of the Federal Senate;
- IV the Minister of Justice,
- V the military Ministers,
- VI the Minister of Foreign Affairs,
- VII the Minister of Planning

(1) It is incumbent upon the Council of National Defense to.

I opine in the event of declaration of war and making of peace, according to this Constitution,

II opine on the decreeing of state of defense, state of siege, and Federal intervention,

III propose the criteria and conditions for the use of areas which are indispensable to the security of the national territory and opine on their effective use, especially on the frontier strip and on those related to the preservation and exploitation of natural resources of any kind,

IV study, propose, and monitor the development of measures required to guarantee national independence and defense of democratic State

(2) The organization and operation of the Council of National Defense are regulated by law

## **CHAPTER III**

### **JUDICIARY BRANCH**

#### **Section I—General Provisions**

**92. Bodies**

The following are bodies of the Judiciary Branch

- I the Federal Supreme Court,
- II the Superior Court of Justice,
- III the Federal-Regional Courts and Federal Judges,
- IV the Labor Courts and Labor Judges,
- V the Electoral Courts and Electoral Judges,
- VI the Military Courts and Military Judges,
- VII the Courts and Judges of the States and of the Federal District and of the Territories

(1) The Federal Supreme Court and the Superior Courts have their seat in the Federal Capital and jurisdiction over the entire national territory.

**93. Statute of Judicature**

A supplemental law proposed by the Federal Supreme Court shall provide for the by-laws of the Judicature, observing the following principles

I admission into the career, with the initial office of alternate judge, through a public competitive examination of tests and titles, with the participation of the Brazilian Bar in all of its phases, and adopting the order of classification for appointments,

II promotion from level to level, alternately through seniority and merit, observing the following rules

a) promotion is mandatory for a Judge who has appeared for three consecutive times or five alternative times in a merit list,

b) merit promotion presupposes two years in office in the respective level, and that the Judge appears in the top fifth part of the seniority list of such level, unless no one satisfying such requirements is willing to accept the vacancy,

c) evaluation of merit according to criteria of promptness and reliability in administering justice and performance in recognized extension courses,

d) in determining seniority, the court may only refuse the most senior judge by the vote of two thirds of its members, according to a specific procedure, the ballot being repeated until the appointment is determined

III access to the courts of second instance are based on seniority and merit, alternately, determined at the last level or, if existing, at the Court of Appeals of Limited Jurisdiction, in the case of promotion to the Court of Appeals, in accordance with Item II and to the candidate's group of origin,

IV establishment of official courses for preparation and improvement of judges as requisites for admission and promotion in their careers,

V the compensation of judges are established with a difference of not more than ten per cent from one to another career category, and under no circumstances may such compensation exceed that of the Justices of the Federal Supreme Court,

VI retirement with full pay is compulsory upon disability or at seventy years of age, and optional upon thirty years of service, after five years of actual activity as a Judge,

VII a permanent Judge resides in the respective judicial district,

VIII acts of removal, of suspension from office and of retirement of a Judge, for public interest, are based on a decision adopted by the vote of two thirds of the respective court, ensuring ample defense,

IX all judgements of bodies of the Judiciary Branch are public, and all decisions must be substantiated, under penalty of being null, and the law may, if the public interest so requires, limit attendance in given acts to only the interested parties and their attorneys, or only to the latter,

X administrative decisions of the courts shall present a justification, and disciplinary decisions shall be adopted by an absolute majority of their members,

XI in courts with more than twenty-five Judges, a special body may be organized with a minimum of eleven and a maximum of twenty-five members, for the purpose of exercising the administrative and jurisdictional duties which are the responsibility of the full court

#### 94. Composition of some Courts

One fifth of the seats on the Federal Regional Courts, of the Courts of Appeals of the States and of the Federal District and Territories are formed by members of the Attorney General's Office with over ten years of service, and by lawyers of notorious legal knowledge and unblemished reputation, with over ten years of actual professional activity, indicated in a list of six names by the entities which represent the respective groups

(1) Upon receipt of the indications, the court sets up a list of three names and sends it to the Executive, which within the subsequent twenty days chooses one of the listed names for appointment

#### 95. Guarantees of the Judges

(0) Judges enjoy the following guarantees

I life tenure, which, at first instance, shall only be acquired after two years in office and, during this period, loss of office is determined by the court to which they belong and, in other cases, by a final and unappealable court decision,

II irremovability, except by reason of public interest, according to Article 93 VIII,

III irreducibility of earnings, with due regard, with respect to compensation, for the provisions of Articles 37 XI, 150 II, 153 III, and 153 (2) I

(1) Judges are forbidden to

I hold, even when suspended from office, any other office or position, except for a teaching position,

II receive, on any account or for any reason, court costs or participation in a lawsuit,

III engage in political party activities

#### 96. Incumbencies

(0) It is incumbent exclusively upon

I the Courts of Appeals

a) to elect their directive bodies and prepare their internal regulations following the rules of procedure and the procedural guarantees of the parties, establishing the jurisdiction and operation of the respective jurisdictional and administrative bodies,

b) to organize their secretariats and ancillary services and those of

the courts connected with them, ensuring performance of the respective inspection activities,

c) to fill, in the manner set forth in this Constitution, offices of career Judges within their respective jurisdiction,

d) to propose the creation of new courts of first instance,

e) to fill by means of public competitive examination of tests, or of tests and titles, with due regard for the provisions of Article 169 (1), the offices required for the administration of Justice, with the exception of positions of trust as defined by law,

f) to grant leave, vacations, and other absences to their members and to the judges and employees who are immediately subordinated to them,

**II** the Federal Supreme Court, the Superior Courts, and the Courts of Appeals, to propose to the respective Legislative Branch, with due regard for the provisions of Article 169

a) alteration in the number of members of lower courts,

b) creation and extinction of offices and establishment of the compensation of their members, of the Judges, including those of the lower courts, if any, of the ancillary services, and of the courts subordinated to them,

c) creation or extinction of lower courts,

d) alteration of the judiciary organization and division,

**III** the Courts of Appeals to try Judges of the States, of the Federal District and of the Territories, as well as the members of the Attorney General's Office, for common crimes and criminal malversation, except in those cases coming under the jurisdiction of the Electoral Courts

## **97. Unconstitutionality**

The courts may declare the unconstitutionality of a law or of a normative act of the Government only by an absolute majority of their members or of the members of the respective special body

## **98. Territories and Federal District**

The Republic, in the Federal District and in the Territories, and the States, shall create

**I** specialized courts, which have qualified Judges or qualified lay Judges, with jurisdiction for conciliation, judgment and execution of civil suits of lesser complexity and criminal offenses of lower offensive potential, by oral and summary proceedings, allowing, in the cases set forth in the law, settlement and judgment of appeals by panels of judges of first instance,

**II** remunerated Justice of Peace, formed by citizens elected by direct, universal, and secret ballot with a term of office of four years and jurisdiction to, as set forth in the law, perform marriages, verify, ex-

officio or by reason, of a challenge, qualification proceedings, and exercise conciliatory functions of a non-jurisdictional nature, besides other functions set forth in the law

#### 99. Full Autonomy

(0) The Judiciary Branch is assured of administrative and financial autonomy

(1) The courts draw up their budget proposals, within the limits stipulated jointly with the other Branches in the budget directives law

(2) The proposal shall, after hearing the other interested courts, be forwarded

I at Federal level, by the Chief Justices of the Federal Supreme Court and of the Superior Courts, with the approval of the respective courts;

II at State level, as well as the level of the Federal District and Territories, by the Chief Justices of the Courts of Appeals, with the approval of the respective courts

#### 100. Special Payments

(0) Except for alimony credits, payments owed by the Federal, State or Municipal Treasuries by virtue of a court decision is made exclusively in chronological order of submission of the judicial requests and on account of the respective credits, it being forbidden to designate cases or persons in budget appropriations and in additional credits opened for such purpose

(1) It is compulsory for the budget of public entities to include the funds required for the payment of their debts as shown on the judicial requests submitted on or before July 1st, on which date their values are adjusted, and payment is made until the end of the following fiscal year

(2) The budgetary appropriations and the credits opened are allotted to the Judiciary, and the respective amounts are paid to the appropriate department. It shall be incumbent upon the Chairman of the Court which rendered the decision to determine payment according to the amount of the deposit, and to authorize, at the creditor's request and exclusively in the event that his right of precedence is not respected, seizure of the amount required to satisfy the debt

### Section II—Federal Supreme Court

#### 101. Composition, Nomination

(0) The Federal Supreme Court is formed by eleven Justices, chosen among citizens over thirty-five years and under sixty-five years of age, with notorious legal knowledge and unblemished reputation

(1) The Justices of the Federal Supreme Court shall be appointed by the President of the Republic, after the choice is approved by the absolute majority of the Federal Senate

#### 102. Functions, Constitutional Court

(0) The Federal Supreme Court is responsible, mainly, for safeguarding

the Constitution and it is incumbent upon it

1 to process and adjudicate, originally

a) direct actions of unconstitutionality of a federal or state law or normative act,

b) in common criminal offenses, the President of the Republic, the Vice-President, the members of Congress, its own justices and the Attorney General of the Republic,

c) in common criminal offenses and criminal malversion, the Ministers of State, excepting the provisions of Article 52 I, the members of the Superior Courts, those of the Federal Audit Court and the heads of permanent diplomatic missions,

d) habeas corpus when the petitioner is any one of the persons referred to in the preceding subsections, writs of mandamus and habeas data against acts of the President of the Republic, of the Presiding Boards of the House of Representatives and of the Federal Senate, of the Audit Tribunal of the Union, of the Attorney General of the Republic, and of the Federal Supreme Court itself,

e) litigation between a foreign State or international organization and the Republic, a State, the Federal District or a Territory,

f) disputes and conflicts between the Republic and the States, the Republic and the Federal District, or between one another, including their respective indirect administration entities,

g) extradition requested by a foreign State,

h) homologation of foreign court decisions and the granting of exequatur to letters rogatory, which may be conferred by its internal regulations upon its President,

i) habeas corpus, when the constraining party or the petitioner is a court, authority or employee whose acts are directly subject to the jurisdiction of the Federal Supreme Court, or in the case of a crime subject to the same jurisdiction in one sole instance,

j) criminal review of and rescissory action for its decisions,

k) claims for the preservation of its jurisdiction and guarantee of the authority of its decisions,

l) enforcement of a court decision in a case for which it has original jurisdiction, the delegation of authority to perform procedural acts being allowed,

m) suits in which all members of the courts are directly or indirectly involved, and suits in which more than half of the members of the court of origin are impaired or have a direct or indirect interest

n) conflicts of jurisdiction between the Superior Court of Justice and any other courts, between Superior Courts, or between the latter and any other court,

o) requests for a writ of prevention in direct actions of unconstitutionality,

p) writs of injunction, when preparation of the regulation is the responsibility of the President of the Republic, of Congress, of the House of Representatives, of the Federal Senate, of the Presiding Boards of one of these Legislative Chambers, of the Audit Tribunal of the Union, of one of the Superior Courts, or of the Federal Supreme Court itself,

II. to adjudicate, at ordinary appeal level

a) habeas corpus, writs of mandamus, habeas data and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial,

b) political crimes,

III to adjudicate, at extraordinary appeal level, cases decided in a sole or last instance, when the appealed decision

a) is contrary to a provision of this Constitution;

b) declares the unconstitutionality of a treaty or a federal law,

c) considers valid a law or an act of a local government contested under this Constitution

(1) A claim of non-compliance with a fundamental precept deriving from this Constitution is examined by the Federal Supreme Court, in accordance with the law

### 103. Unconstitutional Acts Cassation

(0) Unconstitutionality action may be instituted by

I the President of the Republic,

II the Presiding Board of the Federal Senate,

III the Presiding Board of the House of Representatives,

IV the Presiding Board of a State Legislative Assembly,

V a State Governor,

VI the Attorney General of the Republic,

VII the Federal Council of the Brazilian Order of Lawyers,

VIII a political party represented in Congress,

IX a confederation of labor unions or a national class entity.

(1) The Attorney General of the Republic shall first be heard in unconstitutionality actions and in all suits coming under the jurisdiction of the Federal Supreme Court

(2) Upon declaration of unconstitutionality through lack of procedures to make a constitutional provision effective, the appropriate Branch is notified to adopt the necessary action and, in the case of an administrative body, to do so within thirty days

(3) When the Federal Supreme Court examines the theoretical unconstitutionality of a legal provision or normative act, it shall first summon the Advocate General of the Republic, who shall defend the challenged act or text

### Section III—Superior Court of Justice

#### 104. Composition, Nomination

(0) The Superior Court of Justice is formed by at least thirty-three Justices

(1) The Justices of the Superior Court of Justice are appointed by the President of the Republic, selected among Brazilians over thirty-five and under sixty-five years of age, and of notorious legal knowledge and unblemished reputation, after approval of the choice by the Federal Senate, of which

I one-third among the Judges of the Federal Regional Courts, and one-third among the Judges of the Courts of Appeals, indicated in a list of three names drawn up by the Court itself,

II one-third, in equal parts, among lawyers and members of the Attorney General's Office of the Republic, of the States, of the Federal District and of the Territories, alternately, indicated as set forth in Article 94

#### 105. Functions of the Court

(0) It is incumbent upon the Superior Court of Justice

I to process and adjudicate, originally

a) in common crimes, the Governors of the States, and of the Federal District and, in common crimes and criminal malversation, the Justices of the Courts of Appeals of the States and of the Federal District, the members of the Audit Courts of the States and of the Federal District, those of the Federal Regional Courts, of the Regional Electoral and Labor Courts, the members of Audit Courts or Councils of the Municipalities, and the members of the Attorney General's Office of the Republic, who act before courts,

b) writs of mandamus and habeas data against an act of a Minister of State or of the Court itself,

c) habeas corpus, when the constraining party or the petitioner is any of the persons mentioned in sub-section a), or when the constraining party is a Minister of State, except for the jurisdiction of the Electoral Courts,

d) conflicts of jurisdiction between any courts, except for the provisions of Article 102 I o), as well as between a court and judges not subordinated to it, and between judges subordinated to different courts,

e) criminal reviews of and the rescissory actions for its decisions,

f) claims for the preservation of its jurisdiction and guarantee of the authority of its decisions,

g) conflicts of authority between administrative and judicial authorities of the Republic, or between judicial authorities of one State and administrative authorities of another State or of the Federal District, or between those of the latter and those of the Republic,

h) writs of injunction, when the preparation of the regulation is the

responsibility of a federal body, entity or authority, of direct or indirect administration, with the exception of cases coming under the jurisdiction of the Federal Supreme Court and of the bodies of the Military Courts, or the Electoral Courts, of the Labor Courts and of the Federal Courts,

II to adjudicate, at ordinary appeal level

a) habeas corpus decided in a sole instance or last instance by the Federal Regional Courts or by the courts of the States, of the Federal District and Territories, when the decision denies it,

b) writs of mandamus decided in a sole instance by the Federal Regional Courts or by the courts of the States, of the Federal District and of the Territories, when the decision denies it,

c) cases in which the parties are a foreign State or an international organization on the one part, and a Municipality or a person resident or domiciled in Brazil on the other part,

III to adjudicate, at special appeal level, cases decided, in a sole instance or last instance, by the Federal Regional Courts or by the courts of the States, of the Federal District and Territories, when the appealed decision

a) is contrary to a treaty or federal law or denies the effectiveness thereof,

b) considers valid a law or act of a local government, contested in view of a federal law,

c) confers upon a federal law an interpretation different from that which has been conferred upon it by another court

(1) A Council of Federal Justice operates together with the Superior Court of Justice, and it shall, as set forth in the law, exercise administrative and budgetary supervision over the Federal Courts of first and second instances

#### Section IV—Federal Regional Courts and Federal Judges

##### 106. Federal Courts in the States

The following are bodies of the Federal Courts:

I the Federal Regional Courts,

II the Federal Judges,

##### 107. Composition, Nomination, Seat

(0) The Federal Regional Courts are formed by at least seven Judges, selected, whenever possible, in their respective regions and appointed by the President of the Republic among Brazilians over thirty and under sixty-five years of age, of which

I one-fifth among lawyers with over ten years of actual professional activity and members of the Federal Attorney General's Office, with more than ten years of service,

II the others, through promotion of federal Judges with over five years of service, based on seniority and merit, alternately

(1) A law regulates the removal or exchange of Federal Regional Court Judges and determines their jurisdiction and seat

### **108. Functions of Federal Regional Court**

It is incumbent upon the Federal Regional Courts to

I process and adjudicate, originally

a) federal Judges of the area of their jurisdiction, including those of the Military Courts and of the Labour Courts, in common crimes and in criminal malversation, and the members of the Federal Attorney General's Office, except for the jurisdiction of the Electoral Courts,

b) criminal review of and the rescissory action for their decisions or those of the Federal Judges of the region,

c) writs of mandamus and habeas data against an act of the Court itself or of a federal judge,

d) habeas corpus, when the constraining authority is a Federal Judge,

e) conflicts of jurisdiction between Federal Judges subordinated to the Court,

II adjudicate at appeal level, cases decided by Federal Judges and by State Judges exercising Federal authority in the area of their jurisdiction

### **109. Federal Judges' Functions**

(0) It is incumbent upon the Federal Judges to process and adjudicate

I cases in which the Republic, an autonomous government entity or a federal public company have an interest as plaintiffs, defendants, assistants or opponents, except for those relating to bankruptcy, to labor accidents and those subject to the Electoral Courts and the Labor Courts,

II cases between a foreign State or international organization and a Municipality or a person domiciled or resident in Brazil,

III cases based on a treaty or a contract of the Republic with a foreign State or international organization,

IV political crimes and criminal offenses against property, services or interests of the Republic or of its autonomous government entities or public companies, excluding misdemeanour and excepting the jurisdiction of Military Courts and Electoral Courts,

V crimes set forth in an international treaty or conventions, when, prosecution having commenced in Brazil, the result has taken place or should have taken place abroad, or reciprocally,

VI crimes against the organization of labor and, in the cases determined by law, against the financial system and the financial economic order,

VII habeas corpus, in criminal matters under their jurisdiction or

when the constraint originates from an authority whose acts are not directly subject to another jurisdiction;

VIII. writs of mandamus and habeas data against an act of a Federal authority, except for those cases coming under the jurisdiction of the higher Federal courts;

IX crimes committed aboard ships or aircraft, except for the jurisdiction of the Military courts,

X crimes of irregular entry or stay of a foreigner, execution of letters rogatory after exequatur, and of foreign court decision after homologation, cases referring to nationality, including the respective options, and to naturalization,

XI disputes over the rights of Indians

(1) Cases in which the Republic is the plaintiff are instituted in the judicial section where the other party is domiciled

(2) Cases filed against the Republic may be instituted in the judicial section in which the plaintiff is domiciled, in what where the act or fact given rise to the suit took place, or where the item is located, or, further, in the Federal District

(3) Cases in which the parties are a social security institution and its beneficiary shall be processed and adjudicated in the State Courts, in the forum domicile of the beneficiary, whenever the judicial district is not the seat of a Federal Court, in such a situation, the law may permit other cases to be processed and adjudicated in the State Courts

(4) In the event of the preceding paragraph, the proper appeal shall always lie with the Federal Regional Court in the jurisdictional area of the Judge of first instance

#### 110. Regional Courts

(0) Each State, as well as the Federal District, is a judicial section, which has its seat in the respective Capital, and courts located as set forth in the law

(1) In the Federal Territories, the jurisdiction and duties vested in the Federal Judges are incumbent upon the Judges of the local courts, according to the law

### Section V—Labor Courts and Labor Judges

#### 111. Labour Justice

The following are bodies of the Labor Courts

I the Superior Court of Labor,

II the Regional Labor Courts,

III the Conciliation and Judgement Commission

(1) The Superior Labor Court is formed by twenty-seven Justices, chosen among Brazilians over thirty-five years and under sixty-five years of age, appointed by the President of the Republic after approval by the Federal

Senate, of which

I seventeen qualified Judges with life tenure, out of which eleven chosen among career labor Judges, three among lawyers and three among members of the Labor Attorney General's Office,

II ten temporary group Judges, with equal representation of workers and employers

(2) The Court forwards to the President of the Republic lists with three names, with due regard, for the vacancies intended for lawyer and for members of the Attorney General's Office, for the provision of Article 94, and, for the temporary group Judges, for the result of indication by an electoral college formed by the boards of directors of the national confederations of workers or employers, as the case may be, the list of three names for filling the office intended for career labor Judges shall be prepared by life tenured qualified Justices

(3) The jurisdiction of the Superior Labor Court is established by law

#### 112. Regional Labour Court

There has to be at least one Regional Labor Court in each State and in the Federal District, and the law institutes the Conciliation and Judgement Commissions. In those counties in which they are not instituted, the law may ascribe their jurisdiction to the court judges

#### 113. Group Judges

The law provides for the constitution, investiture, jurisdiction, authority, guarantees, and conditions for performance of the bodies of the Labor Courts, ensuring equal representation of workers and employers

#### 114. Labor Courts

(0) It is incumbent upon the Labor Courts to conciliate and adjudicate individual and collective labor disputes between workers and employers, including foreign public entities and those of the direct and indirect public administration of the Municipalities, of the Federal District, of the States and of the Republic and, according to the law, other controversies resulting from labor relationships, as well as litigation which originates from compliance with their own decisions, including those of a collective nature

(1) If collective negotiations are unsuccessful, the parties may elect arbitrators

(2) If any of the parties refuses negotiation or arbitration, the respective unions and syndicates may institute collective bargaining proceedings, and the Labor Courts may establish rules and conditions respecting the minimum conventional and legal provisions for the protection of labor

#### 115. Composition of Regional Courts

(0) The Regional Labor Courts are formed by Judges appointed by the President of the Republic, two-thirds of which to be life tenured qualified

Judges and one-third of which temporary group Judges, observing, with respect to the qualified Judges, the proportion established in Article 111 (1) I

(1) The Judges of the Regional Labor Courts shall be

I labor Judges chosen by promotion, based alternately on seniority and merit,

II. lawyers and members of the Labor Attorney General's Office, complying with the provisions of Article 92,

III group Judges indicated in lists with three names by the boards of the federations and labor unions with their territorial base in the region.

#### **116. Conciliation and Judgement**

(0) A Conciliation and Judgement Commission shall be formed by one labor Judge, who presides over it, and two temporary group Judges representing the workers and the employers

(1) The temporary group Judges of the Conciliation and Judgment Commission are appointed by the President of the Regional Labor Court, according to the law, and one reappointment is permitted

#### **117. Term of Temporary Judges**

(0) The term of office of the temporary Judges in all instances is three years

(1) The temporary group Judges have alternates

### **Section VI—Electoral Courts and Electoral Judges**

#### **118. Electoral Court Bodies**

The following are bodies of the Electoral Courts

I the Superior Electoral Court,

II the Regional Electoral Courts,

III the Electoral Boards

#### **119. Membership**

(0) The Superior Electoral Courts is formed by at least seven members chosen

I through election, by secret ballot

a) three Judges among the Justices of the Federal Supreme Court;

b) two Judges among the Justices of the Superior Court of Justice,

II by appointment of the President of the Republic, two Judges among six lawyers of notorious legal knowledge and good moral repute, indicated by the Federal Supreme Court

(1) The Superior Electoral Court shall select its Chief Justice and Deputy Chief Justice from the Justices of the Federal Supreme Court, and the Electoral Inspector General from the Justices of the Superior Court of Justice

#### **120. Regional Courts**

(0) There has to be a Regional Electoral Court in the Capital of each State and in the Federal District

## (1) The Regional Electoral Courts is formed

I through election, by secret ballot

a) by two Judges among the Justices of the Court of Appeals,

b) by two Judges, among court Judges, chosen by the Court of Appeals,

II by one Judge of the Federal Regional Court with its seat in the Capital of the State or in the Federal District, or, in the absence thereof, by a Federal Judge chosen in any case by the respective Federal Regional Court,

III by appointment by the President of the Republic of two Judges among six lawyers or notorious legal knowledge and good moral repute, indicated by the Court of Appeals

(2) The Regional Electoral Court shall elect its Chief Justice and Deputy Chief Justice among the justices

**121. Powers, functions, organization**

(0) A supplement law provides for the organization and jurisdiction of the Electoral Courts, Judges and Boards

(1) The members of the Courts, the Judges and the members of the Electoral Boards, while in office and to the extent applicable to them, enjoy full guarantees and are irremovable

(2) The Judges of the Electoral Courts, save for a justified reason, serve for two years at least and never for more than two consecutive two year periods, and their substitutes are chosen at the same time and through the same procedure, in equal numbers for each category

(3) The decisions of the Superior Electoral Court are unappealable, with the exception of those which contravene this Constitution and those denying habeas corpus or a writ of mandamus

(4) Decisions of the Regional Electoral Courts may only be appealed when

I they are rendered against an express provision of this Constitution or of a law,

II there is a divergence in the interpretation of a law among two or more electoral courts,

III they deal with the ineligibility or issuance of certificates of election in Federal or State elections,

IV they annul certificates of election or decree loss of Federal or State elective offices,

V they deny habeas corpus, writs of mandamus, habeas data or writs of injunction

**Section VII—Military Courts and Military Judges****122. Bodies**

The following are bodies of the Military Courts

I the Superior Military Court,

II the Military Courts and Judges instituted by law

### 123. Superior Military Court

(0) The Superior Military Court is formed by fifteen life tenured Justices appointed by the President of the Republic after approval of their indication by the Federal Senate, three of which among admirals of the Navy, four among generals of the Army, three among generals of the Air Force, all of them in active service and in the highest rank of their career, and five among civilians

(1) The civilian Justices are chosen by the President of the Republic among Brazilians over thirty-five years of age, of which

I three among lawyers of notonous legal knowledge and unblemished conduct, with over ten years of actual professional activity,

II two, by equal choice, among military Judges and members of the Military Attorney General's Office

### 124. Functions

(0) It shall be incumbent upon the Military Courts to process and adjudicate the military crimes defined by law

(1) The law provides for the organization, operation, and jurisdiction of the Military Courts

## Section VIII—Courts and Judges of the States

### 125. Guidelines

(0) The States organize their Courts, observing the principles established in this Constitution

(1) The jurisdiction of the courts is defined in the Constitution of the State, and the law of judicial organization is the initiative of the Court of Appeals

(2) It is incumbent upon the States to institute actions of unconstitutionality of state or municipal laws or normative acts in view of the State Constitution, and it is forbidden to ascribe standing to act to only one simple body.

(3) By proposal of the Court of Appeals, a State law may create State Military Courts, which are formed at first instance by the Councils of Justice and at second instance by the Court of Appeals itself or by a Military Court of Appeals in those States in which the State troops are more than twenty thousand members

(4) It is incumbent upon the State Military Courts to process and try members of the State troops and of the military fire brigade for the military crimes defined by law, and it is incumbent upon the appropriate court to decide on the loss of post and rank of officers and of the grade of servicemen

**126. Rural Propriety Deputies**

(0) For resolving conflicts relating to rural property, the Court of Appeals designates special level Judges with exclusive jurisdiction for agrarian matters

(1) Whenever required for efficient jurisdictional service, the Judges go personally to the site of the conflict

**CHAPTER IV****FUNCTIONS ESSENTIAL TO JUSTICE****Section I—Attorney General's Office****127. Attorney General's Office**

(0) The Attorney General's Office is a permanent institution, essential to the jurisdiction function of the State, and it is incumbent upon it to defend the juridical order, the democratic regime and indisposable social and individual interests

(1) Unity, indivisibility, and functions independence are institutional principles of the Attorney General's Office

(2) The Attorney General's Office is assured of functional and administrative autonomy, and it may, with due regard for the provisions of Article 169, propose to the legislative the creation and extinction of its offices and ancillary services, filling them through a public competitive examination of tests or of tests and titles, the law shall provide for its organization and operation

(3) The Attorney General's Office draws up its budgetary proposal within the limits established in the budget directives law

**128. Composition**

(0) The Attorney General's Office includes

I the Attorney General's Office of the Republic, which comprises

a) the Federal Attorney General's Office,

b) the Labor Attorney General's Office,

c) the Military Attorney General's Office,

d) the Attorney General's Office of the Federal District and of the Territories,

II the Attorney General's Offices of the States

(1) The head of the Attorney General's Office of the Republic is the Attorney General of the Republic, appointed by the President of the Republic among career members over thirty-five years of age, after approval of his name by an absolute majority of the members of the Federal Senate, for a term of office of two years, re-appointment being permitted

(2) Removal of the Attorney General of the Republic from office, on the initiative of the President of the Republic, is subject to prior authorization by an absolute majority of the Federal Senate

(3) The Attorney General's Office of the State and of the Federal District and of the Territories form a list of three names from career members, as set forth in the respective law, for the choice of their Attorney General, who is appointed by the Head of the Executive Branch for a term of office of two years, re-appointment being permitted

(4) The Attorneys General of the States and of the Federal District and the Territories may be removed from office by a resolution of an absolute majority of the Legislative Branch, as set forth in the respective supplement law

(5) Supplement laws of the Republic and of the States, which may be proposed by the respective Attorney General, shall establish the organization, the duties, and the by-laws of each Attorney General's Office, observing, as regards their members

I the following guarantees

a) life tenure, after two years in office, and loss of office only by a final and unappealable court decision;

b) irremovability, except by reason of public interest, through a decision of the appropriate collegiate body of the Attorney General's Office, by the vote of two-thirds of its members, ensuring ample defense,

c) irreducibility of earnings, observing, with respect to compensation, the provisions of Articles 37 XI, 150 II, 153 III, 153 (2) I,

II the following prohibitions

a) receiving, on any account and under any pretence, fees, percentages or court costs,

b) having a law practice,

c) participating in a commercial company, in accordance with the law,

d) performing, even when suspended from office, any other public function, except for teaching,

e) carrying out political party activities, save for the exceptions set forth in the law

## 129. Functions

(0) The following are institutional functions of the Attorney General's Office,

I to institute, with exclusivity, public criminal action, as set forth in the law,

II to ensure effective respect by the Government Branches and by the services of public relevance for the rights ensured under this Constitution, taking the action required to guarantee such rights,

III to institute civil investigation and public civil action to protect public and social property, the environment, and other diffuse and

collective interests,

IV to institute unconstitutionality action or suit for purpose of intervention by the Republic and by the States, in the cases set forth in this Constitution,

V to defend in court the rights and interest of the Indian populations,

VI to issue notices in administrative procedures under its jurisdiction, requesting information and documents to support same according to the respective supplemental law,

VII to exercise external control over police activities, according to the supplemental law mentioned in the preceding article,

VIII to request investigation procedures and the institution of police investigations, indicating the legal grounds of its procedural acts,

IX to perform other functions which may be conferred upon it, provided that they are compatible with its objectives, with the prohibition of judicial representation and legal consultancy for public entities

(1) The standing of the Attorney General's Office to institute the civil actions set forth in this article does not preclude the standing of third parties in the same cases, according to the provisions of this Constituting and of the law

(2) The functions of the Attorney General's Office may only be performed by career members, who must reside in the judicial district of their respective assignment

(3) Admission into the career take place by means of a public competitive examination of tests and titles, ensuring participation of the Brazilian Bar in such examination and observing, for appointment, the order of classification

(4) The provisions of Article 93 II and VI apply to the Attorney General's Office, where appropriate

### **130. Application for Audit Courts**

The provisions of this section regarding rights, prohibitions, and form of investiture apply to members of the Attorney General's Office before the Audit Courts

## **Section II—Advocacy General of the Republic**

### **131. Advocacy General of the Union**

(0) The Advocacy General of the Union is the institution which, either directly or through a connected body, represents the Republic in and out of Court, and it is responsible, according to the supplemental law which provides for its organization and operation, for the activities of legal consultancy and assistance to the Executive

(1) The head of the Advocacy General of the Union is the Advocate General of the Union, freely appointed by the President of the Republic among citizens over thirty-five years of age, of notorious legal knowledge and unblemished reputation

(2) Admission into the initial classes of the careers of the institution dealt with in this article takes place through a public competitive examination of tests and titles

(3) In execution of tax debts owed by the Republic, the Republic is represented by the Office of the Procurator General of the National Treasury, with due regard for the provisions of the law

### 132. States

The Attorney of the States and of the Federal District perform judicial representation and legal counselling for their respective federated units, organized into a career, admission into which depends on a public competitive examination of tests and titles, with due regard for the provisions of Article 135

## Section III—Advocacy and Public Defender's Office

### 133. Lawyers

The lawyer is indispensable to the administration of justice, and he is inviolable for his acts and statements in the practice of his profession, within the limits of the law.

### 134. Public Defender's Office

(0) The Public Defender's Office is an institution essential to the State's jurisdictional function and responsible for legal advice to and defense of the needy at all instances, set forth in Article 5 LXXIV

(1) A supplemental law organizes the Public Defender's Office of the Republic and of the Federal District and of the Territories, and prescribes general rules for its organization in the States, into career offices, filed, in the initial level, through a public competitive examination of tests and titles, ensuring its members guaranteed irremovability and prohibiting the practice of law outside their institutional duties

### 135. Submission to Principles

The careers regulated under this Title are subject to the principles of Articles 37 XII and 39 (1)

## TITLE V

## DEFENSE OF THE STATE AND OF THE DEMOCRATIC INSTITUTIONS

### CHAPTER I

### STATE OF DEFENSE AND STATE OF SIEGE

#### Section I—State of Defense

#### 136. State of Defense

(0) The President of the Republic may, after hearing the Council of the Republic and the Council of National Defense, decree a state of defense to preserve or to promptly re-establish, in certain and restricted locations, public order or social peace whenever threatened by serious and imminent institutional instability or affected by major natural calamities

(1) The decree instituting a state of defense determines the period of its duration, specifies the areas to be encompassed and indicates, within the terms and limitations of the law, the coercive measures to be put into force out of the following

#### I restrictions to the rights of

- a) meeting, even within associations,
- b) secrecy of correspondence,
- c) secrecy of telegraph and telephone communication,

II occupation and temporary use of public or private property, workforce, and services in the event of a public calamity, the Republic being liable for the resulting damages and costs

(2) A state of defense may not last for longer than thirty days and it may be extended once for an identical period if the reasons justifying the respective decree persist

(3) During the period in which a state of defense is in force

I arrest for a crime against the State, determined by the party executing the measure, are immediately communicated by such party to the proper Judge, who remits it if it is illegal, provided that the arrested person may request examination of corpus delict from the police authority,

II the communication has to be accompanied by a statement by the authority as to the physical and mental state of the arrested person at the time of his or her arrest,

III no person may be imprisoned or detained for more than ten days, unless authorized by the Judiciary branch,

IV incommunicability of the arrested person is forbidden

(4) Upon decree of state of defense or extension thereof, the President of the Republic shall within twenty-four hours submit the act with the respective justification to Congress, which decides by absolute majority

(5) If Congress is in recess, it is called extraordinarily within five days

- (6) Congress examines the decree within ten days as from receipt thereof, and remains in operation as long as the state of defense is in force
- (7) If the decree is rejected, the state of defense ceases immediately

## Section II—State of Siege

### 137. Martial State

(0) The President of the Republic may, after hearing the Council of the Republic and the Council of National Defense, request Congress to authorize a decree of state of siege in the event of

I. serious disturbance with national effects or occurrence of facts that evidence the ineffectiveness of a measure taken during the state of defense

II declaration of state of war or reaction to foreign armed aggression

(1) The President of the Republic shall, on requesting authorization to decree a state of siege or extend it, submit the reasons for such request, and Congress shall decide by absolute majority

### 138. State of Siege Decree

(0) The decree of a state of siege shall specify the period of its duration, the rules required to implement it and the constitutional guarantees that are to be suspended and, after publication, the President of the Republic designates the person who is to execute the specific measures and the areas encompassed

(1) In the event of Article 137 I, state of siege may not be decreed for more than thirty days and each extension may not exceed thirty days, in the event of Item II, it may be decreed for the entire period of the war or foreign aggression

(2) If authorization to decree a state of siege is requested during parliamentary recess, the President of the Federal Senate immediately calls Congress extraordinarily to convene within five days in order to examine the act

(3) Congress remains in operation until the end of the coercive measures

### 139. Restrictions

(0) During the effectiveness of a state of siege decreed under Article 137 I, only the following measures may be taken against persons

I obligation to remain in a given place,

II detention in a building not intended for persons accused of or convicted for common crimes,

III restrictions regarding the inviolability of correspondence, the secrecy of communications, the rendering of information, and freedom of press, radio broadcasting, and television, according to the law,

IV suspension of freedom to meet,

V intervention in public utility companies.

**VI requisitioning of property**

(1) Not included in the restrictions of Item III is the broadcasting of statements made by members of Parliament in their Legislative Houses, if authorized by the respective Presiding Board

**Section III—General Provisions****140. Special Standing Committee**

The Presiding Board of Congress shall, after hearing the party leaders, designate a Committee made up of five of its members to monitor and supervise the implementation of measures of state of defense and state of siege

**141. Termination**

(0) When the state of defense or state of siege ceases, its effects also cease, without prejudice to liability for unlawful acts performed by the executors or agents thereof

(1) As soon as the state of defense or state of siege ceases, the measures applied during the effectiveness thereof are reported by the President of the Republic in a message to Congress, specifying and justifying the action taken, listing the names of those affected and indicating the restrictions applied

**CHAPTER II****ARMED FORCES****142. The Armed Forces, Defence**

(0) The Armed Forces, made up of the Navy, the Army, and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic. They are intended to defend the Nation, guarantee the constitutional branches, and, on the initiative of any of them, law and order

(1) A supplemental law establishes the general rules to be adopted for the organization, training, and employment of the Armed Forces

(2) Habeas corpus does not apply to military disciplinary punishments

**143. Military Service**

(0) Military service is compulsory according to the law

(1) It is incumbent upon the Armed forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, allege reasons of conscience, which shall be understood as reasons based on religious creed and philosophical or political belief for exemption from essentially military activities

(2) Women and clergymen are exempted from compulsory military service in times of peace but are subject to other duties that may be attributed to them by law

**CHAPTER III**

## PUBLIC SECURITY

### 144. Public Security

(0) Public security, which is the duty of the State and the right and responsibility of all, is exercised to preserve public order and the invulnerability of persons and property, by means of the following bodies

- I Federal police,
- II Federal highway police,
- III Federal railway police,
- IV State polices and military fire brigades

(1) The Federal police, instituted by law as a permanent body and structured into a career, is intended

I to determine criminal offenses against the political and social order or to the detriment of property, services, and interests of the Republic and of its autonomous government entities and state companies, as well as other offenses with interstate or international effects and requiring uniform repression according to the law,

II to hinder and repress illegal traffic of narcotics and like drugs, smuggling and contraband, without prejudice to action by the treasury and other government agencies in their respective jurisdiction,

III to exercise the functions of maritime, air and frontier police,

IV to exercise, with exclusivity, the functions of judicial police of the Republic

(2) The Federal highway police is a permanent body structured into a career and intended, according to the law, to ostensibly patrol the Federal highways

(3) The Federal railway police is a permanent body structured into a career and intended, according to the law, to ostensibly patrol the Federal railways

(4) It is incumbent upon the civilian police, directed by career police officers and excepting the authority of the Republic, to exercise the functions of judicial police and to determine criminal offenses, except for military ones

(5) It is incumbent upon the State troops to carry out the functions of ostensive police and to preserve the public order, it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense

(6) The State troops and military fire brigades, ancillary forces, and reserve of the Army are subject, together within the civilian police, to the Governors of the State, of the Federal District and of the Territories

(7) The law regulates the organization and operation of the bodies responsible for public security in such a manner as to guarantee the efficiency of their activities

(8) The Municipalities may organize municipal guards to protect their property, services, and facilities, according to the law

## TITLE VI

## TAXATION AND BUDGET

### CHAPTER I

## NATIONAL TRIBUTARY SYSTEM

### Section I—General Principles

#### 145. Taxation

The Republic, the States, the Federal District, and the Municipalities may institute the following tributes

I taxes,

II fees, by virtue of the exercise of police power or for the actual or potential use of specific and divisible public services rendered to taxpayers or made available to them,

III assessments, by virtue of public works

(1) Whenever possible, taxes shall be personal and graded according to the economic capacity of the taxpayer, and the tax administration may, especially to make these objectives effective and respecting individual rights and the terms of the law, identify the property, income, and economic activities of the taxpayer

(2) Fees may not have the assessment basis reserved for taxes

#### 146. Supplemental Law on Taxes

A supplemental law shall

I deal with conflicts of taxing power among the Republic, the States, the Federal District, and the Municipalities,

II regulate the constitutional limits to taxing power,

III establish general rules for tax legislation, particularly regarding

a) the definition of tributes and their kinds, and, as regards the taxes specified in this Constitution, the definition of the respective taxable events, assessment bases, and taxpayers,

b) tax liability, assessment, credit, statute of limitations, and laches,

c) adequate tax treatment for the cooperative acts performed by cooperative entities

#### 147. Taxation in Territories

In a Federal Territory, state taxes are within the taxing power of the Republic and, if the Territory is not divided into Municipalities, also municipal taxes, municipal taxes are within the taxing power of the Federal District

#### 148. Compulsory Loans

The Republic may, by means of a supplemental law, institute compulsory loans

I to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof,

II in the event of a public investment that is urgent or of relevant national interest, with due regard for the provisions of Article 150 III b)

(1) Applications of the funds derived from a compulsory loan shall be linked to the expense that justified the institution thereof

#### 149. Social and Economic Taxes

(0) It is exclusively incumbent upon the Republic to institute social contributions, contributions regarding intervention in the economic domain, and contributions in the interest of the professional or economic categories, as an instrument of activity in the respective areas, with due regard for the provisions of Articles 146 III and 150 I and III, and without prejudice to the provisions of Article 195 (6), for the contributions mentioned in the provision

(1) The States, the Federal District, and the Municipalities may institute a contribution payable by their servants to fund a social assistance and security system to their benefit

### Section II—Limitations to Taxing Powers

#### 150. Main Limits

(0) Without prejudice to any other guarantees ensured to the taxpayer, it is forbidden for the Republic, the States, the Federal District, and the Municipalities

I to claim or increase a tax without a law establishing such claim or increase,

II to institute unequal treatment for taxpayers that are in an equivalent situation, it being forbidden to make any distinction by virtue of the professional occupation or function performed by them, regardless of the legal designation of the income, instruments or rights,

III to collect tributes

a) for taxable events that occurred before the effectiveness of the law that instituted or increased them,

b) in the same fiscal year in which the law that instituted or increased them was published,

IV to use tributes for purposes of confiscation,

V to establish limitations to the traffic of persons or goods by means of interstate or intermunicipal tributes, except for the collection of toll fees for the use of highways maintained by the Government,

VI to institute taxes on

a) property, income, or services of one by another,

b) temples of any cult,

c) property, income, or services of political parties, including their foundations, of worker unions, and of non-profit educational and social assistance institutions, with due regard for the requirements of the law,

d) books, newspapers, periodicals, and paper intended for the printing thereof,

e) The prohibition contained in Item III b) does not apply to the taxes set forth in Articles 153 I, II, IV, and V, and 154 II

(2) The prohibition contained in Item VI a) extends to autonomous government entities and foundations instituted and maintained by the Government as regards the property, income and services connected with their essential purposes or resulting therefrom

(3) The prohibitions contained in Item VI a) and in the preceding paragraph do not apply to property, income, and services connected with the exploitation of economic activities governed by the rules that apply to private undertakings or to undertakings in which users pay consideration or prices or tariffs, not exempt the party who agreed to buy real property from the obligation to pay tax thereon

(4) The prohibitions contained in Item VI b) and c) encompass only the property, income, and services connected with the essential purpose of the entities mentioned therein

(5) The law determines measures for consumers to obtain information regarding the taxes levied on goods and services

(6) Any amnesty or remission involving taxes or social security may only be granted by means of a specific federal, state, or municipal law

### **151. Limits to the Republic**

It is forbidden for the Republic

I to institute taxes that are not uniform throughout the entire national territory or that imply a distinction or preference regarding a State, the Federal District, or a Municipality to the detriment of another, provided that tax incentives may be granted to balance social economic development among the various regions of Brazil,

II to tax income from public debt bonds of the States, of the Federal District, and of the Municipalities, as well as the compensation and earnings of the respective public agents, at levels above those established for its own bonds and agents,

III to institute exemptions from taxes within the jurisdiction of the States, the Federal District, or the Municipalities

### **152. Forbidden to Divisions**

It is forbidden for the States, the Federal District and the Municipalities to establish a tax difference between goods and services of any nature by virtue of their origin or destination

## **Section III—Federal Taxes**

### **153. Taxes of the Federation**

(0) It is incumbent upon the Republic to institute taxes on

I imports of foreign products,

- II exports to other countries of national or nationalized products,
- III income and earnings of any nature,
- IV industrialized products,
- V transactions of credit, foreign exchange, and insurance, or transactions with instruments and securities,
- VI rural property,
- VII large fortunes, according to a supplemental law

(1) The executive Branch may, with due regard for the conditions and limits established in the law, alter the rates of the taxes listed in Items I, II, IV, and V

(2) The tax established in Item III

I shall be based on criteria of generality, universality, and progressiveness according to the law,

II shall not be levied, according to the terms and limits established in the law, on income derived from retirement and pension paid by the social security system of the Republic, of the States, of Federal District, and of the Municipalities to a person with over sixty-five years of age and whose total income consists exclusively of work pay

(3) The tax set forth in Item IV

I shall be selective, based on the essentiality of the product,

II shall be non-cumulative, and the tax due for each transaction shall be offset by the amount charged at the previous transactions,

III shall not be levied on industrialized products intended for export.

(4) The tax set forth in Item VI shall have its rates established in such a manner as to discourage the maintenance of unproductive real property and shall not be levied on small rural areas, as defined by law, when they are explored by himself or with his family, by an owner who has no other real property

(5) Gold, when defined by law as a financial asset or negotiable instrument, is subject exclusively to the tax mentioned in item V of the main provision of this article, which is due on the original transaction, the minimum rate is one per cent, ensuring the transfer of the collected amount on the following terms

I thirty per cent to the State, the Federal District, or the Territory, depending on the origin,

II seventy per cent to the Municipality of origin

#### 154. National Taxes

The Republic may institute

I by means of a supplemental law, taxes not listed in the preceding article, provided they are non-cumulative and have a specific taxable event or assessment basis other than those specified in this Constitution,

II upon the imminence or in the case of foreign war, extraordinary

taxes, whether or not included in its taxing power, which shall be gradually suppressed when the causes for their creation ceased

#### Section IV—State and Federal District Taxes

##### 155. State and Federal District

(0) It is incumbent upon the States and the Federal District to institute

###### I taxes on

- a) transfer by death and donation of any property or rights,
- b) transactions relating to circulation of goods, and on the rendering of services of interstate and intermunicipal transportation, and of communication services, even if the transactions and rendering begin abroad,
- c) ownership of automotive vehicles,

II additional tax of up to five per cent of the tax paid to the Republic by individuals or legal entities domiciled in the respective territories, by way of the tax set forth in Article 153

###### III on capital profits, gains and income,

(1) The tax set forth in Item I a)

I for real property and respective rights is within the jurisdiction of the Federal District or of the State where the property is located,

II for assets, instruments, and credits is within the jurisdiction of the Federal District or of the State where the probate or enrolment is processed, or where the donor has his or her domicile,

III shall have its authority regulated by a supplemental law

- a) if the donor is domiciled or resident abroad,
- b) if the deceased owned property, was resident or domiciled or had his or her probate processed abroad,

IV shall have its maximum rates established by the Federal Senate

(2) The tax set forth in Item I b) shall comply with the following

I it shall be non-cumulative and the tax due on each transaction of circulation of goods or rendering of services shall be offset by the amount charged at the previous ones by the same or by another State or by the Federal District,

II exemption or non-levy, except as otherwise determined in the law

- a) shall not imply a credit for offset against the amount due on the following transactions or rendering of services,
- b) shall cause the annulment of the credit for the previous transactions,

III may be selective, according to the essentiality of the goods or services,

IV a resolution of the Federal Senate, on the initiative of the President

of the Republic or of one third of the Senators, approved by an absolute majority of its members, establishes the rates that are to apply to interstate and export transactions and rendering of services,

V the Federal Senate may

a) establish minimum rates for internal transactions, by a resolution on the initiative of one third and approved by an absolute majority of its members,

b) establish maximum rates for the same transactions to resolve a specific conflict involving interests of States, by a resolution on the initiative of an absolute majority and approved by two thirds of its members,

VI unless otherwise determined by the States and the Federal District, according to Item VII g), the internal rates for transactions of circulation of goods and of rendering of services may not be lower than those established for interstate transactions,

VII the following shall be adopted for transactions and for rendering of goods and services to end consumers located in another State

a) an interstate rate, when the recipient is a taxpayer,

b) an internal rate, when the recipient is not a taxpayer,

VIII in the event of sub-item a) of the preceding item, the tax corresponding to the difference between the internal rate and the interstate rate shall be attributable to the State where the recipient is located,

IX shall also be levied

a) on the entry of goods imported from abroad, even in the case of goods intended for consumption or for the fixed assets of the establishment, as well as on services rendered abroad, the tax being attributable to the State where the establishment receiving the goods or services is located,

b) on the total value of the transaction, when goods are supplied with services not included in the taxing power of the Municipalities,

X shall not be levied

a) on transactions transferring industrialized products abroad, excluding semi-processed products as defined in a supplemental law,

b) on transactions transferring oil, including lubricants, liquid and gaseous fuels derived there from and electric energy to other States,

c) on gold, in the events defined in Article 153 (5),

XI shall not include in its assessment basis the amount of the tax on industrialized products, when the transaction made between taxpayers and involving a products intended for industrialization or sale, represents a taxable event for both taxes,

XII a supplemental law shall

a) define the taxpayers,

- b) deal with tax substitution,
- c) regulate the system for offsetting the tax,
- d) establish, for purposes of collection of the tax and definition of the liable establishment, the location of transactions of circulation of goods and of rendering of services,
- e) exclude from levy of the tax, in export to other countries, services and products other than those mentioned in Item X a),
- f) provide for the maintenance of a credit for services and goods remitted to another State and exported to other countries,
- g) regulate the manner in which, by resolution of the States and the Federal District, tax exemptions, incentives and benefits shall be granted and revoked

(3) Except for the taxes mentioned in Item I b), of the main provision of this Article and in Articles 153 I and II, and 156 III, no other tax shall be levied on transactions involving electric energy, liquid and gaseous fuels, lubricants, and minerals of Brazil

#### Section V—Municipal Taxes

##### 156. Municipal Taxes

- (0) It is incumbent upon the Municipalities to institute taxes on
- I urban real property,

II transfer of propriety among alive persons, on any account and for consideration, of real property by nature or physical accession and of any in rem rights to real property, except for collateral, as well as the assignment of rights to the purchase thereof,

III retail sales of liquid and gaseous fuels, except for diesel oil,

IV services of any nature not included in Article 155 I b), as defined in a supplemental law

(1) The tax set forth in Item I may be progressive, according to a municipal law, in order to ensure achievement of the social function of the property

- (2) The tax set forth in Item II

I shall not be levied on the transfer of property or rights incorporated into the assets of a legal entity to pay up its capital, nor on the transfer of property or rights as a result of consolidation, merger, spin off or extinction of a legal entity, unless, in the latter cases, the preponderant activity of the purchaser is the purchase and sale of such property or rights, the lease of real property or leasing,

II is attributable to the Municipality where the property is located

(3) The tax set forth in Item III does not preclude the levy of the state tax set forth in Article 155 I b) on the same transaction

- (4) A supplemental law shall

I establish the maximum rates for the taxes set forth in Items III and IV,

II exclude exports of services abroad from levy of the tax set forth in item IV

#### Section VI—Apportionment of Tributary Revenues

##### 157. Attributions for the States

(0) The following shall be attributed to the States and the Federal District

I the proceeds from the collection of the federal tax on income and earnings of any nature withheld at source from income paid on any account by them, their autonomous government entities, and by the foundations they institute and maintain,

II twenty per cent of the proceeds from the collection of the tax that the Republic may institute in exercising the authority conferred in by Article 154 I

##### 158. Attribution to the Municipalities

(0) The following is attributed to the Municipalities

I the proceeds from the collection of the federal tax on income and earnings of any nature withheld at source from income paid on any account by them, their autonomous government entities and by foundations instituted or maintained by them,

II fifty per cent of the proceeds from the collection of the Federal tax on rural property for property located in the Municipalities,

III fifty per cent of the proceeds from the collection of the State tax on the ownership of automotive vehicles licensed in their territories,

IV twenty-five per cent of the proceeds from the collection of the State tax on transactions of distribution of goods and on rendering of services of interstate and intermunicipal transportation and of communication services

(1) The revenue portions attributed to the Municipalities as mentioned in Item IV shall be credit according to the following criteria

I at least three quarters, in proportion to the value added in the transactions of distribution of goods and rendering of services carried out in their territories,

II up to one quarter, as established in State law or, in the case of the Territories, in Federal law

##### 159. Delivery

(0) The Republic shall deliver

I of the proceeds from the collection of taxes on income and earnings of any nature and non-manufactured products, forty-seven per cent in the following manner

a) twenty-one wholes and five-tenths per cent to the Participation

Fund of the States and of the Federal District,

b) twenty-two wholes and five-tenths per cent to the Participation Fund of the Municipalities,

c) three per cent, for allocation to programs to finance the productive sector of the North, Northeast, and Center West Regions, through their regional financial institutions, according to regional development plans, the semi-arid area of the Northeast being assured of half the funds intended for the Region as established in the law,

II of the proceeds from the collection of the tax on industrialized products, ten per cent to the States and to the Federal District, in proportion to the value of respective exports of industrialized products

(1) For purposes of calculating the amount to be delivered under Item I, the portion of the collection of the tax on income and earnings of any nature belonging to the States, the Federal District, and the Municipalities according to Article 157 I, and 158 I shall be excluded

(2) No federated unit may be allocated an amount in excess of twenty per cent of the amount referred to in Item II, and any excess shall be distributed among the other participants, maintaining the apportionment criterion established therein for the latter

(3) It is forbidden to make any retention or restriction regarding the delivery and employment of the funds attributed under this section to the States, the Federal District, and the Municipalities, including any tax additions and increase

#### 160. Prohibition

(0) Withholding or any restriction to the delivery and use of the funds described in this section to the States, to the Federal District, and to the Municipalities, additional and increase relating to taxes comprised therein, is prohibited

(1) This prohibition does not prevent the Union from delivering the funds on condition of payment of its credits

#### 161. Supplemental Law

(0) A supplemental law shall

I define the added value for the purposes of Article 158 (1) I,

II establish rules for the delivery of the funds dealt with in Article 159, especially the criteria for apportionment of the funds mentioned in its item I, seeking to maintain social and economic balance among States and among Municipalities,

III deal with the monitoring, by the beneficiaries, of the calculation of the quotas and release of the participations set forth in Articles 157, 158, and 159

(1) The Audit Tribunal of the Union calculates the quotas referring to the participation funds mentioned in item II

**162. Amount Publication**

(0) The Republic, the States, the Federal District, and the Municipalities shall announce, on or before the last day of the month following the month of collection, the amounts of each of the taxes collected, the funds received, the tax sums delivered and to be delivered and the numerical expression of the apportionment criteria

(1) The data disclosed by the Republic shall be discriminated by State and by Municipality, those of the States by Municipality.

## **CHAPTER II**

### **GOVERNMENT FINANCES**

#### **Section I—General Rules**

**163. Public Finances Law**

A supplemental law deals with

I government finances,

II foreign and domestic government debt, including the debt of the autonomous Government entities, foundations, and other entities controlled by the Government,

III rendering of guarantees by Government entities;

IV issuance and redemption of Government debt bonds,

V supervision of financial institutions,

VI foreign exchange transactions carried out by agencies and entities of the Republic, of the States, of the Federal District, and of the Municipalities,

VII comparability of the functions of the official credit institutions of the Republic, safeguarding all the characteristics and operating conditions of those intended for regional development

**164. Coin Money, Central Bank, Control**

(0) The authority of the Republic to issue money is exercised exclusively by the Central Bank

(1) It is forbidden for the Central Bank to directly grant loans to the National Treasury and to any agency or entity which is not a financial institution

(2) The Central Bank may purchase and sell instruments issued by the National Treasury in order to regulate the money supply of the interest rate

(3) The available cash of the Republic has to be deposited at the Central Bank, that of the States, of the Federal District, of the Municipalities, and of the agencies or entities of the Government and of the companies controlled by the Government, at official financial institutions, excepting the cases established in the law

**Section II—Budgets****165. Budget Plan and Legislation**

(0) Laws in the initiative of the Executive Branch establish

- I the pluriannual plan,
- II the budget directives,
- III the annual budgets

(1) The law that institutes the pluriannual plan establishes, by region, the directives, objectives, and targets of the Federal Government for the capital expenses and other expenses resulting therefrom and for those regarding continuous programs

(2) The budget directives law contains the targets and priorities of the Federal Government, including the capital expenses for the following fiscal year, guides the preparation of the annual budget law, deals with changes in tax legislation, and establishes the investment policy for official promotion financing agencies

(3) The Executive Branch, within thirty days of the end of each two month period, publishes a summarized report on budget implementation

(4) The national, regional, and sectorial plans and programs set forth in this Constitution are prepared in accordance with the pluriannual plan and examined by Congress

(5) The annual budget law comprises

I the tax budget for the Branches of the Republic, their funds, agencies, and entities of direct and indirect administration, including foundations instituted and maintained by the Government,

II the investment budget of the companies in which the Republic directly or indirectly holds the majority of the voting capital,

III the social security budget, covering all entities and agencies of direct or indirect administration connected with social security, as well as funds and foundations instituted and maintained by the Government

(6) The budget law bill is accompanied by a regionalized statement on the effect on revenues and expenses as a result of financial, tax and credit exemptions, amnesties, remissions, subsidies, and benefits

(7) The functions of the budgets established in paragraph (5) I and II made compatible with the pluriannual plan, include the function of reducing interregional differences according to populational criteria

(8) The annual budget law may not contain any provision that does not represent a forecast of revenues, according to the law

(9) {...}

(10) A supplemental law

I deals with the fiscal year, effectiveness, terms, preparation, and organization of the pluriannual plan, of the budget directives law, and of the annual budget law,

II establishes rules of financial and property management by the

direct and indirect administration, as well as conditions for the institution and operation of funds

#### 166. Bills, Drafts

(0) The bills of law regarding the pluriannual plan, the budget directives, the annual budget, and the additional credits are examined by the two Houses of Congress under the common regulations

(1) A permanent mixed Committee of Senators and Representatives shall

I examine and issue its opinion on the bills referred to in this Article and on the accounts submitted each year by the President of the Republic,

II examine and issue its opinion on the national, regional, and sectorial plans and programs established in this Constitution and exercise budgetary monitoring and supervision, without prejudice to the activity of the other committees of Congress and of its Houses, created under Article 58

(2) Amendments shall be submitted to the mixed Committee, which shall issue its opinion on them, and shall be examined, according to the regulations, by the Plenary Session of the two Houses of Congress

(3) Amendments to the bill of the annual budget law or to bills that modify it may only be approved if

I they are compatible with the pluriannual plan and with the budget directives law,

II they specify the necessary funds, allowing only those resulting from the annulment of an expense and excluding those that apply to

a) appropriations for personnel and their charges;

b) debt servicing,

c) constitutional tax transfers to the States, Municipalities and Federal District, or

III they are related

a) to the correction of errors or omissions, or

b) to the provisions of the text of the bill

(4) Amendments to the bill of the budget directives law may not be approved if they are incompatible with the pluriannual plan

(5) The President of the Republic may send a message to Congress to propose the modification of the bills referred to in this article as long as the mixed Committee has not started to vote on the part for which an alteration is being proposed

(6) The bills of the pluriannual plan law, budget directives law and annual budget law are submitted by the President of the Republic to Congress according to the supplemental act referred to in Article 165 (9)

(7) To the extent that they do not conflict with the provisions of this section, the other rules regarding legislative procedure shall apply to the bills mentioned in this Article

(8) Those funds which, by virtue of a veto, amendment or rejection of the bill of the annual budget law, have no corresponding expenses, may be used, as the case may be, means of special or supplemental credits with prior and specific legislative authorization

#### 167. Forbidden

The following is forbidden

I to commence programs or projects not included in the annual budget law,

II to incur expenses or assume direct obligations that exceed the budgetary or additional credits,

III to carry out credit transactions that exceed the amount of capital expenses, excepting those authorized by means of supplemental or special credits for a precise purpose and approved by an absolute majority of the Legislative Branch,

IV to bind tax revenues to an agency, fund or expense, excepting the apportionment of the proceeds from the collection of the taxes referred to in Articles 158 and 159, the allocation of funds to maintain and development education, as determined in Article 212, and the rendering of guarantees for credit transactions by advance of revenues, as established in Article 165 (8),

V to open a supplemental or special credit without prior legislative authorization and without specification of the respective funds,

VI to reclassify, reallocate, or transfer funds from one programming category to another or from one agency to another without prior legislative authorization,

VII to grant or use unlimited credits,

VIII to use, without specific legislative authorization, funds from the tax and social security budgets to satisfy a need or cover a deficit of companies, foundations, and funds, including those mentioned in Article 165 (5),

IX to institute funds of any nature without prior legislative authorization

(1) No investment implemented over more than one fiscal year may be commenced without prior inclusion in the pluriannual plan or without a law authorizing such inclusion, subject to criminal malversation

(2) Special and extraordinary credits shall be effective in the fiscal year in which they are authorized, unless the act authorizing them is promulgated during the last four months of that fiscal year, in which event, the limits of their balances being reopened, they shall be incorporated into the budget of the subsequent fiscal year

(3) Opening of extraordinary credit shall only be allowed to cover unforeseeable and urgent expenses, such as those resulting from war, internal commotion of public calamity, with due regard for the provisions of Article 62

**168. Judicial Branch Funds**

The funds corresponding to budgetary appropriation, including supplementary and special credits, intended for agencies of the Legislative and Judiciary Branches and of the Public Attorneys Office, are delivered to them by the twentieth day of each month, as set forth in the supplemental act referred to in Article 165 (9)

**169. Expenditures**

(0) Expenditures with Republic, State, Federal District, and Municipality staff, in activity and pensioned, may not exceed the limits established in a supplemental act

(1) Granting of any advantage or increase in compensation, creation of jobs or alteration in career structures, as well as hiring of personnel in any way, by agencies and entities of the direct or indirect administration, including foundations instituted and maintained by the Government, may only be effected:

I if there is a prior budgetary appropriation sufficient to cover the estimated personnel expenditures and the accretions resulting therefrom,

II if there is specific authorization in the budget directives law, except for public companies and mixed capital companies

**TITLE VII****ECONOMIC AND FINANCIAL ORDER****CHAPTER I****GENERAL PRINCIPLES OF ECONOMIC ACTIVITY****170. Economic Order, Market System, Social and Democratic Basis**

(0) The economic order, founded on the appreciation of human work and on free enterprise, is intended to ensure everyone a life with dignity, according to the dictates of social justice, with due regard for the following principles

I national sovereignty,

II private property,

III the social function of property,

IV free competition,

V defense of the consumer,

VI defense of the environment,

VII reduction of regional and social differences,

VIII achievement of full employment,

IX favored treatment for small Brazilian companies of national capital

(1) Free exercise of any economic activity is ensured to everyone, regardless of any government authorization, except in the cases set forth by law

**171. Concepts**

(0) The following concepts shall apply

I A Brazilian company is a company organized under Brazilian law and having its head office and management in Brazil,

II a Brazilian company of national capital is a company whose effective control is directly or indirectly held permanently either by individuals resident and domiciled in Brazil or by domestic public entities, provided that effective control of a company shall mean ownership of the majority of its voting capital and de facto and legal exercise of the decision making power to manage its activities

(1) The law may, with regard to a Brazilian company of national capital

I grant special temporary protection and benefits for the conduct of activities deemed strategic to national defense or vital to the development of the country,

II establish, whenever it deems a sector vital to national technological development, the following conditions and requisites, among others

a) the requirements that the control mentioned in item II of the main provision be extended to the company's technological activities, this being understood as de facto and legal exercise of the decision making power to develop or absorb technology,

b) percentages of capital participation by individuals domiciled and resident in Brazil or domestic public entities

(2) In the acquisition of goods and services, the Government shall give preferential treatment to Brazilian companies of national capital, according to the terms of the law

**172. Investments**

The law regulates foreign capital investments, according to national interests, encourages reinvestments, and regulates the remittance of profits

**173. Public Companies**

(0) With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State is only allowed whenever it is necessary to national security or to a relevant collective interest, as defined in the law

(1) Public companies, mixed capital companies, and other entities engaged in economic activities are subject to the specific legal regimes governing private companies, including with respect to labor and tax liabilities

(2) Public companies and mixed capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector

(3) The law regulates the relationships of public companies with the State and with society

(4) The law represses abuse of economic power aiming at domination of markets, elimination of competition, and arbitrary increase of profits

(5) The law, without prejudice to the individual liability of the officers of a legal entity, establishes the liability of the latter, subjecting it to penalties compatible with its nature, for acts that contravene the economic and financial order and the economy of the people.

#### 174. State and Economy

(0) As the normative and regulating agent of economic activity, the State, in the manner set forth by law, performs the functions of supervision, incentive, and planning, the latter being binding for the public sector and indicative for the private sector

(1) The law establishes the guidelines and bases for planning balanced national development, which embody national and regional development plans and make them compatible

(2) The law supports and encourages cooperativism and other forms of association

(3) The State favors the organization of cooperatives for mineral prospecting and mining activities, taking into account the protection of the environment and the social economic promotion of the prospectors and miners

(4) The cooperatives referred to in the preceding paragraph have priority in obtaining authorization or grants for prospecting and mining of mineral resources and deposits in the areas where they are operating and in those established in accordance with Article 21 XXV, in the manner set forth in the law

#### 175. Public Utility Services

(0) In the manner set forth in the law the Government is responsible for providing public utility services either directly or by grant or permit, which will always be through public bidding

(1) The law provides for

I the regime for public utility companies, the special nature of their contract, and of extension thereof, and the conditions of forfeiture, control, and termination of the grant or permit,

II the rights of users,

III tariff policy,

IV the obligation of maintaining adequate services

#### 176. Monopolies

(0) Mineral deposits, whether being exploited or not, and other mineral resources and hydraulic energy potential represent property separate from the soil, for purposes of exploitation or use, and belong to the Republic, the grant holder being guaranteed ownership of the mined product

(1) Prospecting and mining of the mineral resources and use of the hydraulic potential mentioned in the main provision of this Article may only take place with Republic authorization or grant, in the national interests, by Brazilians or by Brazilian companies of national capital, in the manner set

forth in the law, such law to establish specific conditions for such activities to be conducted in the frontier strip or in Indian lands

(2) The owner of the soil is assured of participation in the results of the mining work, in the manner and amount provided for by law

(3) Authorization for prospecting shall always be granted for a limited period of time and the authorizations and grants set forth in this Article may not be assigned or transferred, either in full or in part, without the prior consent of the granting authority.

(4) Exploitation of a renewable energy potential of small capacity does not require an authorization or grant

### **177. Monopoly of Some Activities**

(0) The following are the monopoly of the Republic

I prospecting and exploitation of deposits of oil and natural gas or other fluid hydrocarbons,

II refining of national or foreign oil,

III imports and exports of the products and basic by-products resulting from the activities set forth in the preceding items,

IV ocean transportation of crude oil of national origin or of basic oil by products produced in Brazil, as well as pipeline transportation of crude oil, its by products and natural gas of any origin,

V prospecting, mining, enrichment, reprocessing, industrialization, and trading of nuclear mineral ores and minerals and their by products

(1) The monopoly established in this article includes the risks and results deriving from the activities mentioned therein, and the Republic is forbidden to assign or grant any kind of participation, either in kind or in legal tender, in the exploitation of oil or natural gas deposits, excepting the provisions of Article 20

(2) The law shall provide for the transportation and use of radioactive materials within the Brazilian territory

### **178. Transportation**

(0) The law provides for

I the organization of air, ocean, and land transportation,

II the predominance of national shipowners and ships of Brazilian flag and Brazilian registration and those of the exporting or importing country,

III bulk transportation,

IV the use of fishing and other vessels

(1) The organization of international transportation complies with the agreements signed by the Republic with due regard for the principle of reciprocity

(2) Shipowners, captains, and at least two-thirds of the crew of Brazilian vessels shall be Brazilian

(3) Coastal and internal navigation is reserved for Brazilian vessels except in the event of public need, as establish in the law

#### 179. Small Companies Help

The Republic, the States, the Federal District, and the Municipalities afford micro companies and small companies, as defined by law, differentiated legal treatment, seeking to further them through simplification of their administrative, social security, and credit obligations or through elimination or reduction thereof by means of a law

#### 180. Tourism

The Republic, the States, the Federal District, and the Municipalities promote and further tourism as a factor of social and economic development

#### 181. Response to Foreign Authority

Response to a requisition for a document or for information of a commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity residing or domiciled in Brazil require authorization from the proper Authority

## CHAPTER II URBAN POLICY

#### 182. Municipal Urbanization

(0) The urban development policy carried out by the Municipal Government, according to general guidelines set forth in the law, is aimed at organizing the full development of the city's social functions and ensuring the well-being of its inhabitants

(1) The master plan, approved by the City Council, which is compulsory for cities of over twenty thousand inhabitants, is the basic tool of the urban development and expansion on policy

(2) Urban property performs its social function when it meets the fundamental requirements for the city's organization as set forth in the master plan

(3) Expropriation of urban property is made against prior and fair compensation in cash

(4) The Municipal Government may, by means of a specific law, in relation to areas included in the master plan, demand, according to federal law, that the owner of unbuilt, underused, or unused urban soil provide for adequate use thereof, subject, successively, to

I compulsory subdivision or construction,

II rates of urban property and land tax that are progressive in time,

III expropriation with payment in public debt bonds issued with the prior approval of the Federal Senate, redeemable within up to ten years, in equal and successive annual instalments, ensuring the real value of the compensation and legal interest

**183. Usurpation**

An individual who holds as his own an urban area of up to two hundred and fifty square meters, for five years without interruption or opposition, using it as his or as his family's home, acquires title to such property, provided that he does not own any other urban or rural property

(1) The deed of title and authorization of use is granted to the man or woman, or both, regardless of their marital status

(2) Such right shall not be recognized for the same holder more than once

(3) Public real property shall not be acquired by usurpation

**CHAPTER III**

**AGRICULTURAL AND LAND POLICY  
AND AGRARIAN REFORM**

**184. Agrarian Reform**

(0) It is incumbent upon the Republic to expropriate for social interest, for purposes of agrarian reform, rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of real value and redeemable within a period of up to twenty years as from the second year of issue, and the use of which shall be defined in the law

(1) Useful and necessary improvements are compensated in cash

(2)

(3) A supplemental act establishes special summary adversary proceedings for expropriation action.

(4) The budget each year determines the total volume of agrarian debt bonds, as well as the amount of funds for the agrarian reform program in the fiscal year

(5) Transactions of transfer of property expropriated for agrarian reform purposes are exempt from Federal, State, and municipal taxes

**185. Limits of Agrarian Reform**

(0) The following shall not be subject to expropriation for agrarian reform purposes

I small and medium sized rural property, as defined in the law, provided its owner does not own other property,

II productive property

(1) The law ensures special treatment for productive property and establishes rules for the fulfilment of the requirements for its social function

**186. Social Function, Limits**

The social function is performed when rural property simultaneously meets, according to the criteria and standards prescribed in the law, the following requirements

- I. rational and adequate use;
- II adequate use of available natural resources and preservation of the environment,
- III compliance with the provisions which regulate labor relations,
- IV. exploitation which favors the well-being of the owners and workers.

#### 187. Policy

The agricultural policy is planned and carried out pursuant to the law, with the actual participation of the production sector comprising producers and rural workers, as well as the marketing, storage, and transportation sectors, with special consideration for.

- I credit and fiscal mechanisms,
- II prices compatible with production cost and marketing guarantees,
- III research and technology incentives,
- IV technical assistance and rural extensions,
- V. agricultural insurance,
- VI cooperativism,
- VII rural electricity and irrigation systems;
- VIII. housing for rural workers

(1) Agricultural planning includes agrosindustrial, stock raising, fishing, and forestry activities

(2) Agricultural policy action is rendered compatible with agrarian reform action.

#### 188. Public Vacant Lands

(0) The destination given to public and vacant lands is to be compatible with the agricultural policy and the national agrarian reform plan.

(1) The disposal or granting in any way of public lands with an area of more than two thousand and five hundred hectares to an individual or legal entity, even through an intermediary, shall require the prior approval of Congress

(2) Disposals or grants of public lands for agrarian reform purposes are excluded from the provisions of the preceding paragraph

#### 189. Propriety Title

(0) The beneficiaries of distribution of rural land under the agrarian reform receive deeds of title or authorization of use which may not be transacted for a period of ten years

(1) The deed of title and authorization of use is granted to the man or the woman, or to both, irrespective of their marital status, pursuant to the terms and conditions set forth in the law.

#### 190. Restrictions

The law regulates and restricts the acquisition or lease of rural property

by a foreign individual or legal entity, and determines the cases subject to authorization from Congress

### **191. Usurpation**

(0) The individual who, not being the owner of rural or urban property, holds as his own, for five years, without interruption or opposition, an area of land on the rural zone not exceeding fifty hectares and with his labor and that of his family makes the land productive and dwells thereon, shall acquire ownership of the land

(1) Public property shall not be acquired by usurpation

## **CHAPTER IV**

### **NATIONAL FINANCIAL SYSTEM**

### **192. Financial System**

(0) The national financial system, structured to promote the balanced development of Brazil and serve the collective interests, is regulated by a supplemental law which also provides for

I authorization for the operation of financial institutions, ensuring official and private banks access to all instruments of the banking financial market, such institutions being prohibited from engaging in activities not foreseen in the authorization mentioned in this item,

II authorization and operation of insurance, social security, and capitalization companies, as well as of the official supervisory agency and of the official reinsurance agency,

III conditions for the participation of foreign capital in the institutions referred to in the preceding items, considering especially

a) national interests,

b) international agreements,

IV organization, operation, and duties of the Central Bank and other public and private financial institutions,

V Requirements for the appointment of members of the board of directors of the Central Bank and other financial institutions, as well as their impediments after leaving office,

VI creation of a fund of insurance, for the purpose of protecting the public economy, guaranteeing credits, investments, and deposits up to a certain amount, the participation of federal funds being forbidden,

VII criteria restricting the transfer of savings from regions with income below the national average to more developed regions,

VIII operation of credit cooperatives and requirements for them to operate and have the structure inherent to financial institutions

(1) The authorization referred to in Items I and II are non-negotiable and non-transferable, transfer of control of the authorized legal entity being allowed, and is granted free of charge, according to the national financial

system law, to a legal entity whose directors are technically qualified and of unblemished reputation and which proves that its economic capacity is compatible with the undertaking

(2) The funds for regional programs and projects under the responsibility of the Republic are deposited at their regional credit institutions and invested by them

(3) Real interest rates, including commission and any other consideration directly or indirectly related to the extension of credit, shall not exceed twelve percent per annum, interest charged above this limit shall be considered as a usury crime and shall be punished in all of its forms as the law shall determine

## **TITLE VIII SOCIAL ORDER**

### **CHAPTER I GENERAL PROVISION**

#### **193. Work, Social Justice**

The social order is founded on the primacy of work and aimed at social well-being and justice

### **CHAPTER II SOCIAL SECURITY**

#### **Section I—General Provision**

#### **194. Social Security and Assistance**

(0) Social security comprises an integrated set of initiatives by the Branches of Government and by society, aimed at ensuring the rights to health, social security, and social assistance

(1) It is incumbent upon the Government, pursuant to the law, to organize social security based on the following objectives

- I universality of coverage and service,
- II uniformity and equivalence of benefits and services for urban and rural populations,
- III selectivity and distributivity in the provision of benefits and services,
- IV irreducibility of the value of the benefits,
- V diversity of financing basis;
- VI democratic and decentralized character of administrative management, with the participation of the community and particularly of workers, businessmen and the retired

**195. Financial System**

(0) Social security is financed by all of society, either directly or indirectly, pursuant to the law, with funds derived from the budgets of the Republic, States, Federal District, and Municipalities and from the following social contributions:

I by employers, assessed on the payroll, billings, and profits,

II by workers,

III on revenues from prognostic lotteries

(1) The revenues of the States, Federal District, and Municipalities intended for social security shall be included in the respective budgets and shall not be part of the federal budget

(2) The proposal for the social security budget shall be prepared jointly by the health, social security, and social assistance agencies, taking into account the targets and priorities set forth in the budget directives law, ensuring each area the management of its funds

(3) A legal entity indebted to the social security system, as foreseen in the law, may not contract with the Government nor receive benefits or fiscal or credit incentives from the Government

(4) The law may institute other sources in order to ensure maintenance or expansion of social security, with due regard for the provisions of Article 154 I.

(5) No social security benefit or service may be created, increased, or extended without having a corresponding source of full funding

(6) The social contributions mentioned in this article may only be charged ninety days after the publication of the law which instituted or modified them, and the provisions of Article 150 III b) shall not apply thereto

(7) Social assistance charity institutions, which meet the requirements set forth in the law, are exempted from contribution to social security

(8) Rural producers, partners, half and half sharecroppers and tenant farmers, mineral prospectors, and miners and unqualified fishermen, as well as their respective spouses, contribute to social security by applying a rate to the proceeds from the sale of their production and are entitled to the benefits pursuant to the law

**Section II—Health****196. Health, Right of Assistance**

Health is the right of all persons and the duty of the State and is guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at universal and equal access to all actions and services for the promotion, protection and recovery of health

**197. Public System, Private Nets**

Health actions and services are of public relevance and it is incumbent upon the Government to provide, pursuant to the law, for their regulation,

supervision and control. Such actions and services are to be carried out directly or through third parties and also by means of individuals or legal entities of private law.

#### 198. Public Healthcare Guidelines

(0) Public health actions and services are part of a regionalized and hierarchical network and constitute a single system organized according to the following guidelines:

I decentralization with a single management in each Government sphere,

II full service, priority being given to preventive activities, without prejudice to assistance services,

III participation of the community

(1) The single health system is financed, pursuant to Article 195, with funds from the social security budget of the Republic, the States, the Federal District, and the Municipalities, in addition to other sources.

#### 199. Private Enterprise

(0) Health assistance is open to private enterprise.

(1) Private institutions may participate on a supplementary basis in the single health system, according to guidelines set forth by the latter, by means of public law contracts or agreements, preference being given to philanthropic and non-profit entities.

(2) The allocation of public funds to aid or subsidize private profit seeking institutions is forbidden.

(3) Direct or indirect participation of foreign companies or capital in Brazil's health assistance is forbidden, except in the cases foreseen in the law.

(4) The law establishes the conditions and requirements to allow the removal of human organs, tissues, and substances intended for transplantation, research, and treatment, as well as the collection, processing, and transfusion of blood and its by products, all kinds of sale being forbidden.

#### 200. Single Health System

The single health system shall, in addition to other duties pursuant to the law,

I control and supervise procedures, products and substances of interest to health and participate in the production of drugs, equipment, immunobiological products, hemoproducts, and other inputs,

II carry out sanitary and epidemiological supervision actions and those concerning the health of workers,

III organize the training of human resources in the health area,

IV. participate in the formulation of the policy and execution of action of basic sanitation,

V foster scientific and technological development in its sphere of action,

VI inspect and supervise foodstuffs and control their nutritional contents, as well drinks and water for human consumption,

VII participate in the control and inspection of production, transportation, storage, and use of psychoactive, toxic, and radioactive substance and products,

VIII cooperate in the preservation of the environment, including that of the work place

### Section III—Social Benefits

#### 201. Social Security Plans

(0) The social security plans shall, upon contribution, pursuant to the law, provide

I coverage for the events of illness, disability, death, including those resulting from work accidents, old age, and confinement,

II aid for the support of the dependents of low income insured,

III protection for maternity, especially for pregnant women,

IV protection for workers who are involuntarily unemployed,

V pension for death of an insured man or woman, for the spouse or companion and dependents, with due regard for the provisions of 202 (5)

(1) Any person may receive social security benefits upon contribution according to the social security plans

(2) Adjustment of the benefits is ensured so as to permanently maintain their real value, according to criteria defined in the law

(3) All contribution salaries taken into account in the calculation of a benefit shall suffer monetary correction

(4) The amounts habitually earned by an employee on any account shall be incorporated into his or her salary for purposes of social security contribution and consequent effects on benefits, in cases established in and according to the law

(5) No benefit which replaces the contribution salary or work earnings of the insured shall have a monthly value lower than the minimum wage

(6) The Christmas bonus for the retired and pensioners shall be based on the amount of earnings in the month of December of each year

(7) Social security shall maintain supplementary and optional collective insurance funded by additional contributions

(8) Any subsidy or aid by the Government to private profit seeking pension entitles is forbidden

#### 202. Retirement, Welfare benefit

(0) Retirement is ensured pursuant to the law, the benefit being calculated on the average of the last thirty-six contribution salaries, monetarily corrected month by month and upon evidence that the adjustments to the contribution salaries to maintain their real values were regular and upon satisfaction of the following conditions

I at sixty-five years of age for men and sixty years for women, this age limit being reduced by five years for rural workers of both sexes and for those who carry out their activities with their family, these including rural producers, mineral prospectors, and miners and unqualified fishermen,

II after thirty-five years of work for men and after thirty years for women, or sooner if subject to work under special conditions, which are detrimental to the health or physical integrity, as defined in the law,

III after thirty years for male teachers and after twenty-five years for female teachers, for actual performance of a teaching function

(1) Proportional retirement is allowed after thirty years of work for men and twenty-five for women

(2) For retirement purposes, reciprocal computation is ensured of the period of contribution in the public administration and in private rural and urban activity, in which case the various social security systems shall be financially compensated, according to criteria determined in the law

#### Section IV—Social Assistance

##### 203. Social Assistance

Social assistance shall be rendered to whomever may need it, regardless of contribution to social security, and shall have the following objectives

I to protect the family, maternity, childhood, adolescence, and old age,

II to assist needy children and adolescents,

III to promote integration into the employment market,

IV to habilitate and rehabilitate the handicapped and provide for their integration into the community,

V to guarantee a monthly benefit of one minimum wage to the handicapped and the elderly who prove that they are incapable of providing for their own support or to have their family provide for their support, as established in the law

##### 204. Government Action

Government action in the area of social assistance shall be carried out with funds from the social security budget set forth in Article 195, in addition to other sources, and shall be organized on the basis of the following guidelines

I political and administrative decentralization, the coordination and general rules being within the federal sphere, and the coordination and execution of respective programs being with the state and municipal spheres, as well as charity and social assistance entities,

II participation of the population, by means of class organizations, in the formulation of policies and in the control of actions taken at all levels

## **CHAPTER III**

### **EDUCATION, CULTURE, AND SPORTS**

#### **Section I—Education**

#### **205. Education, Duty and Right**

Education, which is the right of all persons and the duty of the State and of the family, shall be promoted and encouraged with the cooperation of society, aiming at full development of the individual, his or her preparation to exercise citizenship, and his or her qualification for work

#### **206. Fundamental Principles**

Education shall be provided on the basis of the following principles

- I equal conditions for access to and remaining in school,
- II freedom to learn, teach, research, and express thoughts, art, and knowledge,
- III pluralism of ideas and of pedagogical concepts and coexistence of public and private teaching institutions,
- IV free public education in official schools,
- V appreciation of teaching professionals, guaranteeing, pursuant to the law, a career plan for public teachers, with a professional minimum salary and admittance exclusively by means of a public competitive examination of tests and titles, and ensuring as single legal regime for all institutions maintained by the Republic,
- VI democratic administration of public education, pursuant to the law,
- VII guarantee of good quality

#### **207. Universities, Autonomy**

Universities enjoy didactic, scientific, administrative, and financial and equity management autonomy and shall comply with the principle of indivisibility of teaching, research, and extension

#### **208. State Duty**

(0) The State's duty concerning education shall be discharged by ensuring the following

- I compulsory and free elementary education, including for those who did not have access to school at the proper age,
- II progressive extension of compulsory and free education to secondary school,
- III special classes for the handicapped, preferably in the ordinary school network,
- IV assistance to children of zero to six years of age in day care centers and pre-schools,
- V access to higher levels of education, research, and artistic creation according to individual capacity,

VI provision of regular night courses adequate to the student's conditions,

VII. assistance to elementary school students through supplementary programs providing school supplies and material, transportation, food, and health assistance

(1) Access to compulsory and free education is a subjective public right

(2) The proper authority are liable for the Government's failure to provide compulsory education or providing it irregularly

(3) It is incumbent upon the Government to conduct a census of elementary school students, to call them for enrolment and see, jointly with their parents or guardians, that they attend school

## **209. Private enterprises allowed**

Teaching is open to private enterprise, provided that the following conditions are met

I compliance with the general rules of Brazilian education,

II authorization and assessment of quality by the Government

## **210. Elementary and basic Curricula**

(0) Minimum curricula shall be established for elementary school in order to ensure a common basic education and respect for national and regional cultural and artistic values

(1) Religious education is optional and shall be given during the regular school hours of public elementary schools

(2) Regular elementary education shall be given in the Portuguese language, the Indian communities also being ensured the use of their native languages and specific learning procedures

## **211. Education Systems**

(0) The Republic, the States, the Federal District, and the Municipalities cooperate in the organization of their educational systems

(1) The Republic organizes and finances the Federal educational system and that of the Territories and renders technical and financial assistance to the States, to the Federal District, and to the Municipalities for the development of their education systems and provision of compulsory schooling on a priority basis

(2) Municipalities act on a priority basis in elementary and pre-school education

## **212. Budget**

(0) The Republic shall each year apply not less than eighteen per cent, and the States, the Federal District, and the Municipalities at least twenty-five per cent of the tax revenues, including revenues resulting from transfers, in the maintenance and development of education

(1) The share of tax revenues transferred from the Republic to the States, Federal District, and Municipalities or from the States to the respective

Municipalities shall not be considered, for purposes of the calculation provided for in this Article, as revenues of the government making such transfers

(2) For purposes of complying with the main provision of this Article, the Federal, State, and Municipal education systems and the funds employed pursuant to Article 213 shall be taken into consideration

(3) In the distribution of public funds, priority shall be given to meeting the needs of compulsory education pursuant to the national education plan

(4) The supplementary food and health assistance programs foreseen in Article 208 VII shall be financed with funds derived from social contributions and other budgetary funds

(5) An additional source of funds for public elementary education shall be the education salary contribution paid, pursuant to the law, by companies, which may deduct from it the funds invested in elementary education for their employees and dependents

### **213. Public Funds**

(0) Public funds are allocated to public schools, and may be channelled to community, religious, or philanthropic schools, as defined in the law, which

I prove that they do not seek a profit and invest their surplus funds in education,

II ensure that their equity is assigned to another community, philanthropic, or religious school or to the Government in the event they cease their activities

(1) The funds referred to in this Article may be allocated to elementary and secondary school scholarships, pursuant to the law, for those who prove that they do not have sufficient funds, whenever there are not vacancies or regular courses in the public school system of the place where the student lives, the Government being required to invest, on a priority basis, in the expansion of its network in that place

(2) Research and extension activities at university level may receive financial support from the Government

### **214. National Plan**

The law shall lay down the pluriannual national education plan aimed at coordination and development of education at its various levels and at integration of Government action leading to

I eradication of illiteracy,

II universalization of school assistance,

III improvement of teaching quality,

IV professional training,

V humanistic, scientific and technological development of Brazil

**Section II—Culture****215. Culture, Right to access**

(0) The State ensures a person full exercise of their cultural rights and access to sources of national culture and supports and encourages the appreciation and diffusion of cultural manifestations

(1) The State protects manifestations of popular, Indian, and Afro-Brazilian cultures and those of other groups participating in the Brazilian civilization process

(2) The law rules the determination of highly significant commemorative dates for the various national ethnic segments

**216. Cultural Heritage**

(0) The Brazilian cultural heritage consists of assets of material and immaterial nature, considered either individually or as a whole, which bear reference to the identity, action, and memory of the various groups of Brazilian society, which include

I forms of expression,

II forms of creating, doing, and living,

III scientific, artistic, and technological creations,

IV works, objects, documents, constructions, and other spaces intended for artistic and cultural manifestations,

V urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological, and scientific value

(1) The Government shall, with the community's cooperation, promote and protect Brazilian cultural heritage by means of inventories, records, surveillance, monument decrees, expropriation, and other forms of precaution and preservation

(2) It is incumbent upon the Government, pursuant to the law, to take care of governmental documents and to take action to make them available for consultation by whomever may need to do so

(3) The law shall establish incentives for the production and knowledge of cultural assets and values

(4) Damages and threats to cultural heritage shall be punished according to the law

(5) All documents and sites bearing historical reminiscences of the old "quilombos" (hiding place of fugitive black slaves) are preserved as historical assets and monuments

**Section III—Sports****217. Sports, Practice, Associations**

(0) It is the duty of the State to foster the practice of formal and informal sports, as each individual's right, with due regard for

I the autonomy of controlling sports entities and associations as to their organization and operation,

II the allocation of public funds in order to promote, on a priority basis, educational sports and, in specific cases, high income sports,

III differentiated treatment for professional and non-professional sports,

IV the protection and encouragement of national sports events

(1) The Judiciary only hears legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by the law, have been exhausted

(2) The sports court renders final judgment within at most sixty days as from the date of filing of the action

(3) The Government shall encourage leisure as a means of social promotion

## **CHAPTER IV SCIENCE AND TECHNOLOGY**

### **218. Science and Technology**

(0) The State promotes and encourages scientific development, research, and technological expertise

(1) Basic scientific research receive preferential treatment from the State, taking into consideration the public good and the progress of science

(2) Technological research shall be addressed mainly towards the solution of Brazilian problems and to the development of the national and regional productive system

(3) The State supports human resources training in the fields of science, research, and technology and affords special working means and conditions to those engaged in such activities

(4) The law supports and encourages companies which invest in research, in creation of technology appropriate for Brazil, and in training and improvement of their human resources and which adopt compensation systems which ensure employees a share of the economic earnings resulting from the productivity of their work, apart from their salary

(5) The States and the Federal District may allocate part of their budgetary revenues to public entities that foster education and scientific and technological research

### **219. Autonomy**

The domestic market is part of the national wealth and shall be encouraged so as to permit cultural and social and economic development, well-being of the people and technological autonomy of Brazil, pursuant to a Federal law

## CHAPTER V

### SOCIAL COMMUNICATION

#### 220. Freedom of Communication ways

(0) Expression of thought, creation, speech, and information, in any of their forms, processes or media, shall not be subject to any restriction, with due regard for the provisions of this Constitution

(1) No law shall contain any provision which may represent an impediment to full freedom of press information in any social communication medium, with due regard for the provisions of Article 5 IV, V, X, XII, and XIV

(2) Any and all censorship of a political, ideological, and artistic nature shall be forbidden

(3) Federal law shall

I regulate public entertainments and shows, it being incumbent upon the Government to advise about their nature, the age limits they are not recommended for, and places and times unsuitable for exhibition,

II determine the legal remedies which afford individuals and families the possibility of defending themselves against radio and television programs or schedules which contravene the provisions of Article 221, as well as against publicity of products, practices, and services which may be harmful to the health and environment

(4) Commercial advertising of tobacco, alcoholic beverages, pesticides, medicines, and therapies shall be subject to legal restrictions pursuant to item II of the preceding paragraph and shall contain, whenever necessary, a warning concerning the damages caused by the use thereof

(5) Social communication media may not, directly or indirectly, be subject to monopoly or oligopoly

(6) The publication of printed communication media shall not require any official license

#### 221. Principles

The production and programming of radio stations and television channels shall comply with the following principles:

I preference to educational, artistic, cultural, and information purposes,

II promotion of national and regional culture and encouragement of any independent production aimed at diffusion thereof,

III regional characters of cultural, artistic, and journalistic production according to percentages established in the law,

IV respect for the ethical and social values of the individual and of the family

#### 222. Broadcasting

(0) Newspaper and sound and image broadcasting companies shall be owned exclusively by native Brazilians or those naturalized for more than ten

years, who shall be responsible for the management and intellectual guidance thereof

(1) Legal entities shall not participate in the capital stock of journalistic or radio broadcasting companies, except for political parties and for corporations, the capital of which is exclusively and nominally owned by Brazilians

(2) The participation referred to in the preceding paragraph may only take place through non-voting capital and shall not exceed thirty per cent of the capital stock

### **223. Executive Branch**

(0) It is incumbent upon the Executive Branch to grant and renew concessions, permissions, and authorization for radio broadcasting and sound and image broadcasting services, with due regard for the principle of supplementation of private, public and State systems

(1) Congress shall examine such act within the time limit set forth in Article 64 (2) and (4) as from the date of receipt of the message

(2) Non renewal of a concession or permission shall depend upon approval by at least two-fifths of Congress in an open ballot

(3) The act of granting or renewal shall only be legally effective after approval by Congress pursuant to the preceding paragraphs

(4) Cancellation of a concession or permission prior to its expiry date shall depend upon a court decision

(5) The term of a concession or permission shall be ten years for radio stations and fifteen years for television channels,

### **224. Agency**

For the purposes of the provisions contained in this chapter, Congress shall institute, as its ancillary agency, the Social Communication Council pursuant to the law

## **CHAPTER VI ENVIRONMENT**

### **225. Environment Protection**

(0) All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations

(1) In order to ensure the effectiveness of this right, it is incumbent upon the Government to

I preserve and restore essential ecological processes and provide ecological handling of the species and ecosystems,

II preserve the variety and integrity of Brazil's genetic wealth and supervise entities engaged in research and handling of genetic material,

III determine, in all units of the Federation, territorial spaces and components which are to receive special protection, any alteration and suppression only being allowed by means of a law, and any use which adversely affects the integrity of the attributes which justify their protection being forbidden,

IV demand, according to the law, for the installation of works or activities which may cause significant degradation of the environment, a prior environment impact study, which shall be made public,

V control the production, marketing, and use of techniques, methods, and substances which represent a risk to life, to the quality of life, and to the environment,

VI promote environmental education at all school levels and public awareness of the need to preserve the environment,

VII protect the fauna and the flora, all practices which jeopardize their ecological function, cause the extinction of species or subject animals to cruelty being forbidden according to the law

(2) Those who explore mineral resources shall be required to restore the degraded environment according to the technical solution required by the proper Government agency, according to the law

(3) Conduct and activities considered harmful to the environment shall subject the individual or corporate wrongdoers to penal and administrative sanctions, in addition to the obligation to repair the damages caused

(4) The Brazilian Amazon Forest, the Atlantic Woodlands, the "Serra do Mar", the "Pantanal Mato Grossense" and the Coastline are part of the national wealth, and they shall be used, according to the law, under conditions which ensure preservation of the environment, including the use of natural resources

(5) Vacant governmental lands or lands seized by the States through discriminatory actions, which are necessary to protect natural ecosystems, are inalienable

(6) Power plants operated by nuclear reactor shall have their location defined in a federal law and may otherwise not be installed

## CHAPTER VII.

### FAMILY, CHILDREN, ADOLESCENTS, AND ELDERLY

#### 226. Family

(0) The family, the foundation of society, enjoys special protection from the state

(1) Marriage is civil and the marriage ceremony is free of charge

(2) Church marriage has civil effects according to the law

(3) For purposes of State protection, a stable union between a man and a woman as a family unit shall be recognized and the law shall facilitate conversion of such unions into marriage

(4) The community formed by any parent and his/her descendants is also considered a family unit

(5) The rights and duties of matrimonial society shall be exercised equally by men and women

(6) Civil marriage may be dissolved by divorce, after legal separation for more than one year in the cases foreseen in the law, or after "de facto" separation for more than two years

(7) Based upon the principles of human dignity and responsible parenthood, family planning is a free option of the couple, it being incumbent upon the State to provide educational and scientific resources for the exercise of such right and any coercion on the part of official or private institutions being forbidden

(8) The State shall ensure assistance the family in the person of each of its members and shall create mechanisms to suppress violence in family relationships

## 227. Children and Teenagers

(0) It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safe guarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression

(1) The State shall provide full health assistance programs for children and adolescents, allowing the participation of non-Governmental entities and complying with the following precepts

I allocation of a percentage of public funds to mother and child health assistance,

II creation of preventive and specialized care programs for the physically, sensorially, or mentally handicapped, as well as programs for the social integration of the handicapped adolescent by means of training for a profession and communal life, and providing of access to public facilities and services by eliminating prejudices and architectonic obstacles

(2) The law shall provide standards for the construction of public sites and buildings and the manufacturing of public transportation vehicles so as to ensure appropriate access to the handicapped

(3) The right to special protection shall encompass the following aspects

I minimum age of fourteen years to be admitted to work, with due regard for the provisions of Article 7 XXXIII,

II guarantee of social security and labor rights,

III guarantee of access to school for the adolescent worker,

IV guarantee of full and formal knowledge of the determination of an offense, equal rights in procedural relationships and technical defense by

a qualified professional, according to the provisions of specific protection legislation,

V compliance with the principles of brevity, exceptionality, and respect for the specific condition of developing individuals when applying any measure that restrains freedom;

VI Government encouragement, through legal assistance, tax incentives and subsidies, according to the law, of the protection of orphaned or abandoned children or adolescents through guardianship,

VII preventive and specialized treatment programs for children and adolescents addicted to narcotics and related drugs

(4) The law shall severely punish abuse, violence, and sexual exploitation of children and adolescents

(5) Adoption shall be assisted by the Government, according to the law, which shall determine the cases and conditions for adoption by foreigners

(6) Children born inside or outside wedlock or adopted shall have the same rights and qualifications and any discriminatory designation regarding their parents shall be forbidden

(7) In attending to the rights of children and adolescents, the provisions of Article 204 shall be taken into consideration

#### **228. Liability of minors**

Minors under eighteen years of age may not be held criminally liable, subject to the rules of special legislation

#### **229. Duty of Parents**

It is the duty of parents to assist, raise, and educate their minor children, and it is the duty of children of age to help and assist their parents in old age, need or sickness

#### **230. Duty of Society, State, and Family**

(0) The family, society, and the State have the duty to assist the elderly, ensuring their participation in the community, defending their dignity and well being, and guaranteeing their right to life

(1) Assistance programs for the elderly shall be carried out preferable in their homes

(2) Those over sixty-five years of age are guaranteed free urban public transportation

### **CHAPTER VIII**

#### **INDIANS**

#### **231. Native Populations and Lands**

(0) Indians shall have their social organization, customs, languages, creeds, and traditions recognized, as well as their native rights to the lands they traditionally occupy, it being incumbent upon the Republic to demarcate them and protect and ensure respect for all their property

(1) Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those which are indispensable to preserve the environmental resources required for their well being and those necessary for their physical and cultural reproduction, according to their uses, customs, and traditions

(2) The lands traditionally occupied by Indians are intended for their permanent possession, and they shall be entitled to exclusive use of the riches of the soil, rivers, and lakes existing thereon

(3) Hydric resources, including energy potential, may only be exploited and mineral riches in Indians lands may only be prospected and mined with the authorization of Congress, after hearing the communities involved, which shall be assured of participation in the mining results in accordance with the law

(4) The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to the statute of limitations

(5) It is forbidden to remove Indian groups from their lands except, "ad referendum" of Congress, in the event of epidemic which represents a risk for their population or in the interest of Brazilian sovereignty, after resolution by Congress, provided that immediate return as soon as the risk ceases shall be ensured under all circumstances

(6) Acts aiming at occupation, domain and possession of the lands referred to in this Article, or at exploitation of the natural riches of the soil, rivers, and lakes existing thereon, are null and void and of no legal effect, except in the case of relevant public interest of the Republic, according to a supplemental act, such nullity and voidness shall not create a right to indemnity or to sue the Republic, except as to improvements derived from occupation in good faith in accordance with the law

(7) The provisions of Article 174 (3) and (4) shall not apply to Indian lands

### **232. Right of Indians**

Indians, their communities, and organizations have standing to sue to defend their rights and interests, the Public Attorney's Office intervening in all the procedural acts

## **TITLE IX**

### **GENERAL CONSTITUTION PROVISIONS**

#### **233. Duty of Employers**

(0) For the purposes of Article 7 XXXIX, the rural employers shall every five years produce evidence before the Labor Courts that they have performed their labor obligations toward rural employees, in the presence of the latter and of their union representatives

(1) Upon evidence that the obligations mentioned in this Article have been performed, the employer shall be exempt from any encumbrances

deriving from such obligations in the respective period. If the employee and his representative do not agree with the employer's evidence, the dispute shall be resolved by the Labor Courts.

(2) The employee shall in any case have the right to claim in court the credits which he believes he is entitled to for the last five years.

(3) The evidence mentioned in this Article may be provided at intervals of less than five years, at the discretion of the employer.

#### **234. Forbidden to the Republic**

It is forbidden for the Republic to assume, directly or indirectly, as a result of the creation of a State, burdens related to expenses with inactive personnel and with charges and repayments of domestic and foreign debts of the Government, including the indirect administration.

#### **235. New States special provision**

During the first ten years after the creation of a State, the following basic rules shall be observed:

I the Legislative Assembly shall be made up of seventeen Representatives, if the population of the State is less than six hundred thousand inhabitants, and of twenty-four Representatives, if the population is equal to or exceeds that number, up to one million and five hundred thousand inhabitants,

II the Government may not have more than ten Departments,

III the Audit Court shall have three members appointed by the elected Governor from among Brazilians of proven good repute and notorious knowledge,

IV the Higher Court of Justice shall have seven Judges,

V the first Judges shall be appointed by the elected Governor, chosen in the following manner:

a) five of them from among Judges with more than thirty-five years of age and acting within the area of a new State or of the State which gave origin to the new States,

b) two of them from among public prosecutors under the same conditions, and attorneys of proven good repute and legal knowledge with at least ten years of professional practice, complying with the procedure set forth in the Constitution,

VI in the case of a State which was originally a Federal Territory, the first five Judges may be chosen from among law Judges from any part of Brazil,

VII in each Judicial District, the first Judge, the first Public Prosecutor, and the first Public Defender shall be appointed by the elected Governor after taking a public competitive examination of tests and titles,

VIII until the enactment of the State Constitution, the offices of State Attorney General, Advocate General, and Defender General shall be held by lawyers of notorious knowledge, with at least thirty-five years of age, appointed by the elected Governor and removable "ad nutum",

**IX** if the new State results from the transformation of a Federal Territory, the transfer of financial charges from the Republic for payment of opting civil servants who belonged to the Federal Administration shall take place as follows

a) in the sixth year after its creation, the State shall assume twenty percent of the financial charges in order to pay the civil servants, the remainder continuing as the liability of the Republic,

b) in the seventh year, thirty percent shall be added to the State's charges and, in the eighth year, the remaining fifty percent,

**X** the appointments made after the first appointments for the offices referred to in this article shall be regulated by the State Constitution,

**XI** budgetary personnel expenses shall not exceed fifty per cent of the State's revenues

### **236. Registration and Notes**

(0) Notary and registration services shall be provided by private entities, by Government delegation

(1) A law shall regulate the activities, discipline the civil and criminal liability of Notaries, or Registrars and of their agents, and shall define the supervision of their acts by the Judiciary

(2) A Federal law shall establish the general rules for fixing the fees for the acts performed by Notary and Registration services

(3) The commissioning of a Notary public and Registrar shall depend on a public competitive examination of tests and titles and no office may remain vacant for more than six months without opening a public examination to fill or reallocate such office

### **237. Ministry of Finance, Trade**

Supervision and control of foreign trade, which are essential to the defense of national interests, shall be exercised by the Ministry of Finance

### **238. Supplemental Law, Oil**

The law shall organize the sale and resale of oil and carburetant alcohol fuels and of other fuels derived from renewable raw materials, with due regard for the principles of this Constitution

### **239. Change of old Acts**

(0) The revenues from contributions to the Social Integration Program created by Supplemental Act No 7 of September 7, 1970 and to the Civil Servants Fund created by Supplemental Act No 8 of December 3, 1970, shall, as from the enactment of this Constitution, as established by the law, fund the unemployment insurance program and the bonus referred to in paragraph (3) of this Article

(1) At least forty per cent of the funds referred to in the main provision of this Article shall be allocated to finance economic development programs, through the National Economic and Social Development Bank, with consideration criteria which preserve their value

(2) The accrued assets of the Social Integration Program and the Civil Servants Fund shall be preserved, maintaining the criteria for withdrawal in the situations set forth in specific laws, except for withdrawal by reason of marriage, the distribution of the revenues referred to in the main provision of this Article for deposit in the individual accounts of participants being forbidden

(3) Employees who receive monthly compensation of up to two minimum wages from employers who contribute to the Social Integration Program or to the Civil Servants Fund are ensured annual payment of a minimum wage, which shall include the income on the individual accounts, in the case of those who already participated in such programs before the date of enactment of this Constitution

(4) Funding of the unemployment insurance program shall receive an additional contribution from any company in which employee turnover exceeds the average turnover rate of the sector, as established in the law.

#### **240. Exclusion Provision**

The present compulsory contribution by employers on the payroll, which are intended for private social service and professional training entities linked to the labor union system, are excluded from the provisions of Article 195

#### **241. Application of some principle**

The principle of Article 39 (1) corresponding to the careers regulated by Article 135 of this Constitution, shall apply to career police officers

#### **242. Education Provisions**

(0) The principle of Article 206 IV does not apply to official educational institutions created by State or Municipal law and in existence on the date of enactment of this Constitution and which are not totally or preponderantly maintained with public funds

(1) The teaching of Brazilian History shall take into account the contribution of the different cultures and ethnic groups to the formation of the Brazilian people

(2) The "Pedro II School" located in the city of Rio de Janeiro, shall be maintained in the federal sphere

#### **243. Drug plantations disappropriation**

(0) Land areas in any region of Brazil where illegal plantations of psychotropic plants are found shall be expropriated immediately and used specifically for the settlement of tenant farmers and for the plantation of food and medicinal products, with no indemnity to the owner and without prejudice to other sanctions set forth in the law

(1) Any and all good of economic value seized as a result of illegal traffic of narcotics and similar drugs shall be confiscated and reverted to the benefit of institutions and persons specialized in the treatment and recovery of addicts and in equipping and funding activities of supervision, control, prevention, and repression of drug traffic crime

**244. Transportation**

The law shall provide on the adaptation of public sites and buildings and of existing public transportation vehicles, in order to ensure adequate access to the handicapped, pursuant to the provisions of Article 227 (2)

**245. International Crimes**

The law shall provide for the circumstances and conditions under which the Government shall give assistance to the needy heirs and dependents of victims of intentional crimes, without prejudice to the civil liability of the perpetrator of the offense

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# 8

## CONSTITUTION OF CAMBODIA

### PREAMBLE

We, the people of Cambodia

Accustomed to having been an outstanding civilization, a prosperous, large, flourishing and glorious nation, with high prestige radiating like a diamond

Having declined grievously during the past two decades, having gone through suffering and destruction, and having been weakened terribly,

Having awakened and resolutely rallied and determined to unite for the consolidation of national unity, the preservation and defense of Cambodia's territory and precious sovereignty and the fine Angkor civilization, and the restoration of Cambodia into an "Island of Peace" based on multi-party liberal democratic responsibility for the nation's future destiny of moving toward perpetual progress, development, prosperity, and glory,

WITH THIS RESOLUTE WILL

We inscribe the following as the Constitution of the Kingdom of Cambodia

### CHAPTER 1 SOVEREIGNTY

1. Cambodia is a Kingdom with a King who shall rule according to the Constitution and to the principles of liberal democracy and pluralism. The Kingdom of Cambodia shall be an independent, sovereign, peaceful, permanently neutral and non-aligned country

2. The territorial integrity of the Kingdom of Cambodia shall absolutely not be violated within its borders as defined in the 1/100,000 scale map made

between the years 1933-1953 and internationally recognized between the years 1963-1969

3. The Kingdom of Cambodia is an indivisible State
4. The motto of the Kingdom of Cambodia is- "Nation, Religion, King"
5. The official language and script are Khmer
6. Phnom Penh is the capital of the Kingdom of Cambodia. The national flag, anthem and coat-of arms shall be defined in Annexes I, II and III (Not reproduced)

## CHAPTER II

### THE KING

7. The King of Cambodia shall reign but shall not govern  
The King shall be the Head of State for life  
The King shall be inviolable
8. The King of Cambodia shall be a symbol of unity and eternity of the nation

The King shall be the guarantor of the national independence, sovereignty, and territorial integrity of the Kingdom of Cambodia, the protector of rights and freedom for all citizens and the guarantor of international treaties

9. The King shall assume the august role of arbitrator to ensure the faithful execution of public powers

10. The Cambodian monarchy shall be an appointed regime

The King shall not have the power to appoint a heir to the throne

11. If the King cannot perform His normal duties as Head of State due to His serious illness as certified by doctors chosen by the President of the Assembly and the Prime Minister, the President of the Assembly shall perform the duties of Head of State as "Regent".

12. In case of the death of the King, the President of the Assembly shall take over the responsibility as acting head of State in the capacity of Regent of the Kingdom of Cambodia.

13. Within a period of not more than seven days, the new King of the Kingdom of Cambodia shall be chosen by the Royal Council of the Throne

The Royal Council of The Throne shall consist of

The President of the National Assembly

The Prime Minister

Samdech the Chiefs of the orders of Mohanikay and Thammayut.

The First and Second Vice-President of the Assembly

The organization and functioning of the council Throne shall be determined by law

14. The King of Cambodia shall be a member of the Royal family of at least 30 years descending from the blood line of King Ang Duong, King

12 Norodom or King Sisowath Upon enthronement, the King shall take the oath of allegiance as stipulated in Annex IV

13 15. The wife of the reigning King shall have the royal title of QUEEN OF CAMBODIA

14 16. The Queen of the Kingdom of Cambodia shall not have the right to engage in politics, to assume the role of head of State or head of Government, or to assume other administrative or political roles

15 The Queen of the Kingdom of Cambodia shall exercise activities that serves the social, humanitarian, religious interests, and shall assist the King with protocol and diplomatic functions

16 17. The provision as stated in the first clause of Article 7, " the King shall reign but shall not govern", absolutely not be amended

17 18. The King shall communicate with the Assembly by royal messages These royal messages shall not be subjected to discussion by the National Assembly

18 19. The King shall appoint the Prime Minister and the Council of Ministers according to the procedure stipulated in Article 100

19 20. The King shall grant an audience twice a month to the Prime Minister and the Council of Ministers to hear their reports on the State of the Nation

20 21. Upon proposals by the Council of Ministers, the King shall sign decrees (Ret) appointing, transferring or ending the mission of high civil and military officials, Ambassadors and Envoys Extraordinary and Plenipotentiary Upon proposal by the Supreme Council of the Magistracy, the King shall sign decrees (Ret) appointing, transferring or removing Judges

21 22. When the nation faces danger, the King shall make a proclamation to the people putting the country in a state of emergency after agreement with the Prime Minister and the President of the Assembly

22 23. The King is the Supreme Commander of the Royal Khmer Armed Forces The Commander-in-Chief of the Royal Khmer Armed Forces shall be appointed to command the Royal Khmer Armed Forces

23 24. The King is to serve as Chairman of the Supreme Council of National Defense to be established by law The King shall declare war after approval of the National Assembly

24 25. The King shall receive letters of credentials from Ambassadors or Envoys Extraordinary and Plenipotentiary of foreign countries accredited to the Kingdom of Cambodia

25 The King shall declare war after approval of the National Assembly

26 26. The King shall sign and ratify international treaties and conventions after a vote of approval by the National Assembly

27 27. The King shall have the right to grant partial or complete amnesty

28 28. The King shall sign the law promulgating the Constitution, laws (Kram) adopted by the National Assembly, and sign decrees (Kret) presented by the council of Ministers

29. The King shall establish and confer national medals proposed by the Council of Ministers

The King shall confer civil and military ranks as determined by law

30. In the absence of the King, the President of the Assembly shall assume the duties of Acting head of State

### *CHAPTER III*

#### **THE RIGHTS AND OBLIGATIONS OF KHMER CITIZENS**

31. The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and Conventions related to Human Rights, Women's and Children's Rights Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others The exercise of such rights and freedom shall be in accordance with law

32. Every Khmer citizen shall have the right to life, personal freedom and security

33. Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is a mutual agreement on extradition

Khmer citizens residing abroad enjoy the protection of the State

Khmer nationality shall be determined by a law

34. Khmer citizens of either sex shall enjoy the right to vote and to stand as candidates for the election Citizens of either sex of at least eighteen years old, have the right to vote Citizens of either sex of at least 25 years old, have the right to stand as candidates for the election Provisions restricting the right to vote and to stand for the election shall be defined in the electoral law for the election

35. Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation Any suggestions from the people shall be given full consideration by the organs of the State

36. Khmer citizens of either sex shall have the right to choose any employment according to their ability and to the needs of the society

Khmer citizen of either sex shall receive equal pay for equal work The work by housewives in the home shall have the same value as what they can receive when working outside the home Every Khmer citizen shall have the right to obtain social security and other social benefits as determined by law

Khmer citizens of either sex shall have the right to form and to be members of trade unions The organization and conduct of trade unions shall be determined by law

37. The right to strike and to non-violent demonstration shall be implemented in the framework of a law

38. The law guarantees that there shall be no physical abuse against any individual

The law shall protect the life, honor and dignity of the citizens

The prosecution, arrest, or detention of any person shall not be done except in accordance with the law. Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law. Confession obtained by physical mental force shall not be admissible as evidence of guilt. Khmer citizens of either sex shall respect public and legally acquired private properties. Any case of doubt shall be resolved in favour of the accused.

The accused shall be considered innocent until the court has judged finally on the case. Every citizen shall enjoy the right to defense through judicial recourse.

39. Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by the State and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall reside under the competence of the courts.

40. Citizens' freedom to travel, far and near, and legal settlement shall be respected. Khmer citizens shall have the right to travel and settle abroad and return to the country. The right to privacy of residence and to the secrecy of correspondence by mail, telegram, fax, telex, and telephone shall be guaranteed. Any search of the house, material and body shall be in accordance with the law.

41. Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. The regime of the media shall be determined by law.

42. Khmer citizens shall have the right to establish associations and political parties. These rights shall be determined by law. Khmer citizens may take part in mass organizations for mutual benefit to protect national achievements and social order.

43. Khmer citizens of either sex shall have the right to freedom of belief. Freedom of religious belief and worship shall be guaranteed by the State on the condition that such freedom does not affect other religious beliefs or violate public order and security. Buddhism shall be the State religion.

44. All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by the law. The right to confiscate possessions from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.

45. All forms of discrimination against woman shall be abolished. The exploitation of women in employment shall be prohibited in marriages and matters of the family. Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.

46. The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited. A woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits. The State and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions.

47. Parents shall have the right to take care of and educate their children to become good citizens.

Children shall have the right to take good care of their elderly mother and father according to Khmer traditions.

48. The State shall protect the rights of the children as stipulated in the Convention on Children, particular, the right to life, education, protection during wartime, and from economic or sexual exploitation.

The State shall protect children from acts that are injurious to their education opportunities, health and welfare.

49. Every Khmer citizen shall respect the Constitution and laws.

All Khmer citizens shall have the duty to take part in the national reconstruction and to defend the homeland. The duty to defend the country shall be determined by law.

50. Khmer citizens of either sex shall respect the principles of national sovereign, liberal multi-party democracy.

Khmer citizens of either sex shall respect public and legally acquired private properties.

## **CHAPTER IV**

### **ON POLICY**

51. The Kingdom of Cambodia adopts a policy of Liberal Democracy and Pluralism.

The Cambodian people are the masters of their country.

All powers belong to the people. The people exercise these powers through the National Assembly, the Royal Government and the Judiciary.

The Legislative, Executive, and the Judicial powers shall be separated.

52. The Royal Government of Cambodia shall protect the independence, sovereignty, territorial integrity of the Kingdom of Cambodia, adopt the policy of national reconciliation to insure national unity, and preserve the good national traditions of the country. The Royal Government of Cambodia shall

preserve and protect the law and ensure public order and security The State shall give priority to endeavors which improve welfare and standard of living of citizens

53. The Kingdom of Cambodia adopts a policy of permanent neutrality and non-alignment The Kingdom of Cambodia follows a policy of peaceful co-existence with its neighbors and with all other countries throughout the world

The Kingdom of Cambodia shall not invade any country, nor interfere in any other country's internal affairs, directly or indirectly, and shall solve any problem peacefully with due respect for mutual interests

The Kingdom of Cambodia shall not join in any military alliance or military pact which is incompatible with its policy of neutrality

The Kingdom of Cambodia shall not permit any foreign military base on its territory and shall not have its own military base abroad, except within the framework of a United Nations request

The Kingdom of Cambodia reserves the right to receive foreign assistance in military equipment, armaments, ammunition, in training of its armed forces, and other assistance for self-defense and to maintain public order and security within its territory

54. The manufacturing, use, storage of nuclear, chemical or biological weapons shall be absolutely prohibited

55. Any treaty and agreement incompatible with the independence, sovereignty, territorial integrity, neutrality and national unity of the Kingdom of Cambodia shall be annulled

## CHAPTER V ECONOMY

56. The Kingdom of Cambodia shall adopt market economy system The preparation and process of this economic system shall be determined by law

57. Tax collection shall be in accordance with the law The national budget by law The national budget shall be determined by law

The management of the monetary and financial system shall be defined by law

58. State property notably comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense and other facilities determined as State property

The control, use and management of State properties shall be determined by law

59. The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind geology, ecologic system, mines, energy, petrol, and gas, rocks and

sand, gems, forests and forestial products, wildlife, fish and aquatic resources

60. Khmer citizens shall have the right to sell their own products. The obligation to sell products to the State, or the temporary use of State or properties shall be prohibited unless authorized by law under special circumstances

61. The State shall promote economic development in all sectors and remote areas, especially in agriculture, handicrafts industry, with attention to policies of water, electricity, roads, and means of transport, modern technology and a system of credit

62. The State shall pay attention and help solve production matters, protect the price of products for farmers and crafters, and find marketplace for them to sell their products

63. The State shall respect market management in order to guarantee a better standard of living for the people

## **CHAPTER VI**

### **EDUCATION, CULTURE, SOCIAL AFFAIRS**

64. The State shall ban and severely punishes those who import, manufacture, sell illicit drugs, counterfeit and expired goods which affect health and life of the consumers

65. The State shall protect and upgrade citizens' rights to quality education at all levels and shall take necessary steps for quality education to reach all citizens

The State shall respect physical education and sports for the welfare of all Khmer citizens

66. The State shall establish a comprehensive and standardized education system throughout the country that shall guarantee the principles of educational freedom and equality to ensure that all citizens have equal opportunity to earn a living

67. The State shall adopt an educational program according to the principle of modern pedagogy including technology and foreign languages

The State shall control public and private schools and classrooms at all levels

68. The State shall provide primary and secondary education to all citizens in public schools

The State shall disseminate and develop the Pali schools and the Buddhist Institutes

69. The State shall protect and promote the Khmer language as required

The State shall preserve ancient monuments, artifacts and restore historic sites

70. Any offense affecting cultural and artistic heritage shall carry a severe punishment

71. The perimeter of the national heritage sites as well as heritage that has been classified as world heritage, shall be considered neutral zones where there shall be no military activity

72. The health of the people shall be guaranteed The State shall give full consideration to disease prevention and medical treatment Poor citizens shall receive free medical consultation in public hospitals, infirmaries and maternities

The State shall establish infirmaries in rural areas

73. The State shall give full consideration to children and mothers The State shall establish nurseries, and help support women and children who have inadequate support

74. The State shall assist the disabled and the families of combatants who sacrificed their lives for the nation

75. The State shall establish a social security system for workers and employees

## CHAPTER VII THE ASSEMBLY

76. The assembly consists of at least 120 members

The deputies shall be elected by a free, universal, equal, direct and secret ballot The deputies may be re-elected Khmer citizens able to stand for election shall be the Khmer citizens of either sex who have the right to vote, at least 25 years of age, and who have Khmer nationalities at birth Preparation for the election, procedure and electoral process shall be determined by an Electoral Law

77. The deputies of the Assembly shall represent the entire Khmer people, not only Khmers from their constituencies

Any imperative mandate shall be nullified

78. The legislative term of the Assembly shall be 5 years and terminates on the day when the new assembly convenes

The assembly shall not be dissolved before the end of its term except when the Royal Government is twice deposed within a period of twelve months In this case, following a proposal from the Prime Minister and the approval of the Assembly President, the King shall dissolve the Assembly

The election of a new Assembly shall be held no later than 60 days from the date of dissolution During this period, the Royal Government shall only be empowered to conduct routine business In times of war or other special circumstances an election cannot be held, the Assembly may extend its term for one year at a time, upon the request of the King Such an extension shall require at least a two-third vote of the entire Assembly.

79. The Assembly mandate shall be incompatible with the holding of any active public function and of any membership in other institutions provided for in the Constitution, except when the Assembly member(s) is (are) required to serve in the Royal Government

In these circumstances, the said Assembly members shall retain the usual Assembly membership but shall not hold any position in the Permanent Standing Committee and in other Assembly Commissions

80. No Assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his or her duties

The decision made by the Standing Committee of the Assembly shall be made only with the permission of the Assembly or by the Standing Committee of the Assembly between sessions, except in case of flagrante delicto. In that case, the competent authority shall immediately report to the Assembly or to the Standing Committee for decision

The decision made by the Standing Committee of the Assembly shall be submitted to the Assembly at its next session for approval by a 2/3 majority vote of the Assembly members

In any case, detention or prosecution of a deputy shall be suspended by a 3/4 majority vote of the Assembly members

81. The Assembly shall have the autonomous budget to conduct its function

The deputies shall receive a remuneration

82. The Assembly shall hold its first session no later than sixty days after the election upon notice by the King

Before taking office, the Assembly shall decide on the validity of each member's mandate and vote separately to choose a President, Vice-Presidents and members of each Commission by a 2/3 majority vote

All Assembly members must take the oath before taking office according to the text contained in Annex 5

83. The Assembly shall hold its ordinary sessions twice a year

Each session shall last at least 3 months. If there is a proposal from the King or the Prime Minister, or at least 1/3 of the Assembly members, the Assembly Standing Committee shall call an extraordinary session of the Assembly

In this case, the agenda with the conditions of the extraordinary, shall be disseminated to the population as well as the date of the meeting

84. Between the Assembly sessions, the Assembly Standing Committee shall manage the work of the Assembly

The Permanent Standing Committee of the Assembly consists of the President of the Assembly, the Vice-Presidents, and the Presidents of Assembly Commissions

85. The Assembly sessions shall be held in the royal capital of Cambodia in the Assembly Hall, unless stipulated otherwise in the summons, due to special circumstances. Except where so stipulated and unless held at the place and date as stipulated, any meeting of the Assembly shall be considered as illegal and void

86. If the country is in a state of emergency the Assembly shall meet every day continuously. The Assembly has the right to terminate this state of

emergency whenever the situation permits. If the Assembly is not able to meet because of circumstances such as the occupation by foreign forces the declaration of the state of emergency must be automatically extended. During the state of emergency, the Assembly shall not be dissolved.

87. The President of the Assembly shall chair the Assembly sessions, receive Draft Bills and resolutions adopted by the Assembly, ensure the implementation of the Internal Rules of Procedure and manage the Assembly relations with foreign countries. If the President is unable to perform his/her duties due to illness or to fulfill the functions of Head of State ad interim or as a Regent, or is on a mission abroad, a Vice-President shall replace him. In case of resignation or death of the President or the Vice-President(s), the Assembly shall elect a new President or Vice-President(s).

88. The Assembly sessions shall be held in public.

The Assembly shall meet in closed session at the request of the President or of at least 1/10 of its members, of the King or of the Prime Minister.

The Assembly meeting shall be considered as valid provided there is a quorum of 7/10 of all members.

89. Upon the request by at least 1/10 of its members, the Assembly shall invite a high ranking official to clarify important issues.

90. The Assembly shall be the only organ to hold legislative power. This power shall not be transferable to any other organ or any individual.

The Assembly shall approve Administrative Accounts.

The Assembly shall approve the law on amnesty.

The Assembly shall approve or annul treaties or international conventions.

The Assembly shall approve law on the declaration of war.

The adoption of the above-mentioned clauses shall be decided by a simple majority of the entire Assembly membership.

The Assembly shall pass a vote of confidence in the Royal Government by a 2/3 majority of all members.

91. The deputies and the Prime Minister shall have the right to initiate legislation.

The deputies shall have the right to propose any amendments to the laws, but, the proposals shall be unacceptable if they aim at reducing public income or increasing the burden on the people.

92. Laws adopted by the Assembly which run counter to the principles of preserving national independence, sovereignty, administration of the nation shall be annulled.

The Constitutional Council is the only organ which shall decide upon this annulment.

93. Any law approved by the Assembly and signed by the King for its promulgation, shall go into effect in Phnom Penh 10 days after signing and throughout the country 20 days after its signing.

Laws that are stipulated as urgent shall take effect immediately throughout the country after promulgation

All laws promulgated by the King shall be published in the Journal Official and published throughout the country in accordance with the above schedule

94. The Assembly shall establish various necessary commissions. The organization and functioning of the Assembly shall be determined by the Assembly Internal Rules of Procedure

95. In case of death, resignation, or dismissal of an Assembly deputy at least 6 months before the end of the mandate, a replacement shall be appointed in accordance with the Internal Rules of Procedure of the National Assembly and the Electoral Law

96. The deputies have the right to put a motion against the Royal Government. The motion shall be submitted in writing through the President of the Assembly.

The replies shall be given by one or several Ministers depending on the matters to the accountability of one or several Ministers. If the case concerns the overall policy of the Royal Government, the Prime Minister shall reply in person

The explanations by the Ministers or by the Prime Minister shall be given verbally or in writing

The explanations shall be provided within 7 days after the day when the question is received

In case of verbal reply, the President of the Assembly shall decide whether to hold an open debate or not. If there is no debate, the answer of the Minister or the Prime Minister shall be considered final. If there is a debate, the questioner, other speakers, the Ministers, or the Prime Minister may exchange views within the time frame not exceeding one session

The Assembly shall establish one day each week for questions and answers. There shall be no vote during any sessions reserved for this purpose

97. The Assembly Commissions may invite any Minister to clarify certain issue under his/her field of responsibility

98. The Assembly shall dismiss a member or members of the Royal Government or the whole Cabinet by the adoption of a motion of censure by 2/3 majority of the entire Assembly

The motion of censure shall be proposed to the Assembly by at least 30 Assembly members in order for the entire Assembly to decide

## *CHAPTER VIII*

### **THE ROYAL GOVERNMENT**

99. The Council of Ministers is the Royal Government of Cambodia

The Council of Ministers shall be led by one Prime Minister assisted by Deputy Prime Ministers, and by State Ministers, Ministers, and State Secretaries as members

100. At the recommendation of the President and with the agreement of both Vice-Presidents of the Assembly, the King shall designate a dignitary from among the representatives of the winning party to form the Royal Government. This designated Assembly or members of the political parties represented in the from the Assembly. After the Assembly has given its vote of confidence, the King shall issue a Royal decree (Kret) appointing the entire Council of Ministers. Before taking office, the Council of Ministers shall take an oath as stipulated in Annex 6.

101. The functions of members of the Royal Government shall be incompatible with professional activities in trade or industry and with the holding of any position in the public service.

102. Members of the Royal Government shall be collectively responsible to the Assembly for the overall policy of the Royal Government.

Each member of the Royal Government shall be individually responsible to the Prime Minister and the Assembly for his/her own conduct.

103. Members of the Royal Government shall not use the orders, written or verbal, of anyone as grounds to exonerate themselves from their responsibility.

104. The Council of Minister shall meet every week in a plenary session or in a working session.

The Prime Minister shall chair the plenary sessions.

The Prime Minister may assign a Deputy Prime Minister to preside over the working sessions. Minutes of the Council of Ministers' meeting shall be forwarded to the King for His information.

105. The Prime Minister shall have the right to delegate his power to a Deputy Prime Minister or to any member of the Royal Government.

106. If the post of Prime Minister is permanently vacant, a new Council of Ministers shall be appointed under the procedure stipulated in this Constitution. If the vacancy is temporary, an acting Prime Minister shall be provisionally appointed.

107. Each member of the Royal Government shall be punished for any crimes or misdemeanors that he/she has committed in the course of his/her duty. In such cases and when his/her duty, the Assembly shall decide to file charges against him/her with competent.

The Assembly shall decide on such matters through a secret vote by a simple majority thereof.

108. The organization and functioning of the Council of Ministers shall be determined by law.

## CHAPTER IX

### THE JUDICIARY

109. The Judicial power shall be an independent power.

The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

The Judiciary shall cover all law suits including administrative ones

The authority of the Judiciary shall be granted to the Supreme Court and to lower courts of all sectors and levels

110. Trials shall be conducted in the name of the Khmer citizens in accordance with the legal procedures and laws in force

Only Judges shall have the right to adjudicate A Judge shall fulfill this duty with strict respect for the laws wholeheartedly, and conscientiously

111. Judicial power shall not be granted to the Legislative or Executive Branches

112. Only the Department of Public Prosecution shall have the right to file criminal suits

113. The King shall be the guarantor of the independence of the Judiciary The Supreme Council of the Magistracy shall assist the King in this matter

114 Judges shall not be dismissed The Supreme Council of the Magistracy shall take disciplinary actions against any delinquent Judges

115. The Supreme Council of the Magistracy shall be established by an organic law which shall determine its composition and functions

The Supreme Council of the Magistracy shall be chaired by the King The King may appoint a representative to chair the Supreme Council of the Magistracy

The Supreme Council of the Magistracy shall make proposals to the King on the appointment of Judges and prosecutors to all courts

The Supreme Council of the Magistracy shall meet under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court to decide on disciplinary actions against the Judges or prosecutors

116 The statutes of Judges, and prosecutors and the functioning of the Judiciary shall be defined in separate laws

## **CHAPTER X**

### **THE CONSTITUTIONAL COUNCIL**

117. The Constitutional Council shall have the duty to safeguard respect for the Constitution, to interpret the Constitution, and the laws passed by the Assembly

The Constitutional Council shall have the right to examine and decide on contested cases involving the election of Assembly members

118. The Constitutional Council shall consist of nine members with a nine-year mandate

One-third of the members of the Council shall be replaced every three years Three members shall be appointed by the King, three members by the Assembly and three others by the Supreme Council of the Magistracy

The Chairman shall be elected by the members of the Constitutional Council

He/she shall have a deciding vote in cases of equal vote

119. Members of the Constitutional Council shall be selected among the dignitaries with a higher-education degree in law, administration, diplomacy or economics and who have considerable work experience

120. The function of a Constitutional Council member shall be incompatible with that of a member of the Royal Government, member of the Assembly, President or Vice-President of a political party, President or Vice-President of trade-union or in-post Judges

121. The King, the Prime Minister, the President of the Assembly, or 1/10 of the Assembly members shall forward Draft Bills to the Constitutional Council for examination before their promulgation

The Constitutional Council shall decide within no more than thirty days whether the laws and the Internal Rules of Procedure are constitutional

122. After the law is promulgated, the King, the Prime Minister, the President of the Assembly, 1/10 of the Assembly members or the courts, may ask the Constitutional Council to examine the Constitutionality of that law

Citizens shall have the right to appeal against the Constitutionality of the laws as through their representatives or the President of the Assembly as stipulated in the above paragraph

123. Provisions of any article ruled by the Council as unconstitutional shall not be promulgated or implemented

The decision of the Council is final

124. The King shall consult with the Constitutional Council on all proposals to amend the Constitution

125. An organic law shall specify the organization and operation of the Constitutional Council

## CHAPTER XI

### THE ADMINISTRATION

126. The territory of the Kingdom of Cambodia shall be divided into provinces and municipalities

Provinces shall be divided into districts (srok) and district into commune (khum)

Municipalities shall be divided into Khan into Sangkat

127. Provinces, municipalities, districts, khan, khum, and sangkat shall be governed in accordance with organic law

## CHAPTER XII

### THE NATIONAL CONGRESS

128. The National Congress shall enable the people to be directly informed on various matters of national interests and to raise issues and requests for the State authority to solve

Khmer citizens of both sexes shall have the right to participate in the National Congress

129. The National Congress shall meet once a year in early December at the convocation of the Prime Minister

It shall proceed under the chairmanship of the King

130 The National Congress shall adopt recommendations for consideration by State authorities and the Assembly

The organization and operation of the National Congress shall be defined by a law

### *CHAPTER XIII*

#### **EFFECTS, REVISION AND AMENDMENTS OF THE CONSTITUTION**

131. This Constitution shall be the Supreme law of the Kingdom of Cambodia

Laws and decisions by the State institutions shall have to be in strict conformity with the Constitution

132. The initiative to review or to amend the Constitution shall be the prerogative of the King, the Prime Minister, the President of the Assembly at the suggestion of 1/4 of all the Assembly members

Revision or amendments shall enacted by a Constitutional law passed by the Assembly with a 2/3 majority vote

133. Revision or amendment shall be prohibited when the country is in the state of emergency, as outlined in Article 86

### *CHAPTER XIV*

#### **TRANSITIONAL PROVISION**

134. Revision or amendment affecting the system of liberal and pluralistic democracy and the regime of Constitutional Monarchy shall prohibited

135. This Constitution, after its adoption, shall be declared in force immediately by the Head of State of Cambodia

136. After the entry into force of this Constitution, the Constituent Assembly shall become the National Assembly

The Internal Rules of Procedure of the Assembly shall come into force after adoption by the Assembly

In the case where the Assembly is not yet functional, the President, the First and Second Vice-Presidents of the Constituent Assembly shall participate in the discharge of the duties in the Throne Council if so required by the situation in the country

137. After this Constitution takes effect, the King shall be selected in accordance with conditions stipulated in Articles 13 and 14

138. After this Constitution take effects, and during the first legislature, the King of the Kingdom of Cambodia shall appoint a First Prime Minister and a Second Prime Minister to form a Royal Government after securing the consent of the President and the two Vice-Presidents of the Assembly

The Co-President existing before the adoption of this Constitution shall participate as members of the Committee and in the Throne Council as stipulated in Articles 11 and 13 above

139. Laws and standard documents in Cambodia that safeguard State properties, rights, freedom and legal private properties and in conformity with the national interests, shall continue to be effective until altered or abrogated by next texts, except those provisions that are contrary to the spirit of this Constitution

This Constitution was adopted by the Constitutional Assembly in Phnom Penh on 21 September 1993 at its second plenary session

*(Annexes not reproduced)*

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## CONSTITUTION OF CANADA

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{Adopted in 1982}

Constitution Act, 1982

### *Part I*

### CANADIAN CHARTER OF RIGHTS AND FREEDOMS

#### PREAMBLE

Whereas Canada is founded upon the principles that recognize the supremacy of God and the rule of law

#### *TITLE 1*

#### GUARANTEE OF RIGHTS AND FREEDOMS

##### 1. Limitation of Rights

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

#### *TITLE 2*

#### FUNDAMENTAL FREEDOMS

##### 2. Freedom of Religion, Speech, Association

Everyone has the following fundamental freedoms

(a) freedom of conscience and religion,

- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other means of communication,
- (c) freedom of peaceful assembly, and
- (d) freedom of association

### *TITLE 3*

## **DEMOCRATIC RIGHTS**

### **3. Electoral Rights**

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein

### **4. Term Limits**

(1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be

### **5. Minimum Sessions**

There shall be a sitting of Parliament and of each legislature at least once every twelve months.

### *TITLE 4*

## **MOBILITY RIGHTS**

### **6. Freedom to Move**

(1) Every citizen of Canada has the right to enter, remain in, and leave Canada

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province, and
  - (b) to pursue the gaining of livelihood in any province
- (3) The rights specified in sub-section (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of present or previous residence, and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Sub-sections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada

## **TITLE 5**

### **LEGAL RIGHTS**

#### **7. Personal Integrity**

Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice

#### **8. Search and Seizure**

Everyone has the right to be secure against unreasonable search or seizure

#### **9. Imprisonment**

Everyone has the right not to be arbitrarily detained or imprisoned

#### **10. Arrest**

Everyone has the right on arrest or detention

- (a) to be informed promptly of the reason therefor,
- (b) to retain and instruct counsel without delay and to be informed of that right, and
- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful

#### **11. Fair Trial**

Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence,
- (b) to be tried within a reasonable time,
- (c) not to be compelled to be a witness in a proceedings against that person in respect of the offence,
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal,
- (e) not to be denied reasonable bail without cause,
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment,
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or International law or was criminal according to the general principles of law recognized by the community of nations,

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again, and

(i) if found guilty of the offence and if punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment

#### **12. No Cruel Punishment**

Everyone has the right not to be subjected to any cruel or unusual treatment or punishment

#### **13. Right Against Self-Incrimination**

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence

#### **14. Right to Interpreter**

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter

### **TITLE 6 EQUALITY RIGHTS**

#### **15. General Equality, No Discrimination**

(1) Every individual is equal before the and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability

(2) Sub-section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability

### **TITLE 7 OFFICIAL LANGUAGES OF CANADA**

#### **16. English, French**

(1) English and French are the official languages of Canada and have equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to the use in all institutions of the legislature and Government of New Brunswick

(3) Nothing in this Charter limits the authority of Parliament of a legislature to advance the equality of status or use of English and French

### **16.1 New Brunswick**

(1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities

(2) The role of the legislature and the Government of New Brunswick to preserve and promote the status, rights and privileges referred to in sub section (1) is affirmed

### **17. Parliamentary Languages**

(1) Everyone has the right to use English or French in any debates or other proceedings of Parliament

(2) Everyone has the right to use English or French in any debate and other proceeding of the legislature of New Brunswick

### **18. Legislative Languages**

(1) The Statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative

(2) The Statutes, records and journals of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative

### **19. Court Languages**

(1) Either English or French may be used by any person in, or in any pleading in or process issuing from any court established by Parliament

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from any court of New Brunswick

### **20. Administrative Languages**

(1) Any member of the public of Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or Government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is significant demand for communications with and services from that office in such language, or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an

institution of the legislature or Government of New Brunswick in English or French

#### 21. Other Language Provisions

Nothing in sections 16 to 20 abrogates or derogates from any right, privilege, or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada

#### 22. Prior Language Rights

Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French

### TITLE 8

## MINORITY LANGUAGE EDUCATIONAL RIGHTS

#### 23. Educational Languages

##### (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language

(3) The right of citizens of Canada under sub-sections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction, and

(b) includes, where the number of children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds

## **TITLE 9**

### **ENFORCEMENT**

#### **24. Access to Courts**

(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances

(2) Where, in proceedings under sub-section (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute

## **TITLE 10**

### **GENERAL**

#### **25. Aboriginal Rights**

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty, or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763, and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired

#### **26. Prior Rights**

The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada

#### **27. Multicultural Heritage**

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians

#### **28. Sex Equality**

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons

#### **29. School Privileges**

Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate, or dissentient schools

#### **30. Applicability to Territories**

A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon

Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be

### 31. Legislative Powers

Nothing in this Charter extends the legislative powers of any body or authority

## TITLE 11

### APPLICATION OF CHARTER

#### 32. Canada and Provinces

(1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories, and

(b) to the legislatures and Governments of each province in respect of all matters within the authority of the legislature of each province

(2) Notwithstanding sub-section (1), section 5 shall not have effect until three years after this section comes into force

#### 33. Early Application

(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or section 7 to 15 of this Charter

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration

(3) A declaration made under sub-section (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration

(4) Parliament or the legislature of a province may re-enact a declaration made under sub-section (1)

(5) Sub-section (3) applies in respect of re-enactment made under sub-section (4)

## TITLE 12

### CITATION

#### 34. Citation

This part may be cited as the Canadian Charter of Rights and Freedoms

**Part II****RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA****35. General Rights**

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis peoples of Canada

(3) For greater certainty, in sub-section (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in sub-section (1) are guaranteed equally to male and female persons

**35.1. Constitutional Amendments**

The Government of Canada and the provincial governments are committed to the principle that, before any amendment is made to clause 24 of section 91 of the "Constitution Act, 1867", to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada, and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item

**Part III****EQUALIZATION AND REGIONAL DISPARITIES****36. Equal Opportunities**

(1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians,

(b) furthering the economic development to reduce disparity in opportunities, and

(c) providing essential public services of reasonable quality to all Canadians

(2) Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation

*Part IV*

**CONSTITUTIONAL CONFERENCE {...}**

**17.1. At least two Conferences**

(1) In addition to the Conference convened in March, 1983, at least constitutional conferences composed of the Prime Minister of Canada and the first Ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date

(2) Each Conference convened under sub-section (1) shall have included in its agenda matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters

(3) The Prime Minister of Canada shall invite elected representatives of the Government of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under sub-section (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories

(4) Nothing in this section shall be construed as to derogate from sub-section 35(1)

*Part V*

**PROCEDURE FOR AMENDING THE CONSTITUTION OF CANADA**

**38. Qualified Proceedings**

(1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) resolutions of the Senate and the House of Commons, and

(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of the provinces

(2) An amendment made under sub-section (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under sub-section (1)

(3) An amendment referred to in sub-section (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment

(4) A resolution of dissent made for the purposes of sub-section (3) may be revoked at any time before or after the issue of the proclamation to which it relates

**39. Delayed Enforcement**

(1) A proclamation shall not be issued under section 38 (1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

(2) A proclamation shall not be issued under section 38 (1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder

**40. Compensation**

Where an amendment is made under section 38 (1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply

**41. Highly Qualified Proceedings**

An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assemblies of each province

(a) the office of the Queen, the Governor General, and the Lieutenant Governor of a province,

(b) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force,

(c) subject to section 43, the use of the English or the French language,

(d) the composition of the Supreme Court of Canada, and

(e) an amendment to this Part

**42. Subjects for Qualified Proceedings**

(1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with section 38 (1)

(a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada,

(b) the powers of the Senate and the method of selecting Senators

(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators,

(d) subject to section 41 (d), the Supreme Court of Canada,

(e) the extension of existing provinces into the territories and

(f) notwithstanding any other law or practice, the establishment of new provinces

(2) Sections 38 (2) to 38 (4) do not apply in respect of amendments in relation to matters referred to in sub-section (1)

**43. Subjects for Highly Qualified Proceedings**

An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all provinces, including

(a) any alteration to boundaries between provinces, and

(b) any amendment to any provisions that relate to the use of the English or the French language within a province may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies

**44. National Amendment Powers**

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to executive Government of Canada or the Senate and House of Commons

**45. Provincial Amendment Powers**

Subject to section 41, the legislature of each province may exclusively make laws amending the Constitution of the province

**46. Initiative**

(1) The procedures for amendment under sections 38, 41, 42, and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of province

(2) A resolution of assent for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it

**47. Default Adoption**

(1) An amendment to the Constitution of Canada made by proclamation under sections 38, 41, 42, and 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in sub-section (1)

**48. Adoption Proceedings**

The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this part forthwith on the adoption of the resolution required for an amendment made by proclamation under this Part

**49. Constitutional Review**

A constitutional conference of the Prime Minister of Canada and the first Ministers shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part

**Part VI****AMENDMENT TO THE CONSTITUTION ACT, 1867****50. {...}****51. {.. }****Part VII****GENERAL****52. Constitution of Canada**

(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect

(2) The Constitution of Canada includes

(a) the Canada Act, 1982, including this Act,

(b) the Acts and orders referred to in the Schedule, and

(c) any amendment to any Act or order referred to in paragraph (a) or (b)

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada

**53. Repealed Provisions**

(1) The enactments referred to in Column I of the Schedule (not reproduced) are hereby repealed or amended to be extent indicated in Column II thereof, and unless repealed, shall continue as law in Canada under the names set out in Column III thereof

(2) Every enactment, except the Canada Act, 1982, that refers to an enactment referred to in the Schedule by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in the Schedule (not reproduced) may be cited as the Constitution Act followed by the year and number, if any, of its enactment

**54. Repealed Provisions**

Part IV is repealed on the day that is one year after this Part comes into force, and this section may be repealed and this Act renumbered, consequentially upon the repeal of Part IV and this section, by proclamation issued by the Governor General under the Great Seal of Canada

**55 French Version**

A French version of the portions of the Constitution of Canada referred to in the Schedule shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada

**56. Equal Authority of Versions**

Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 55, the English and French versions of that portion of the Constitution are equally authoritative

**57. Equal Authority of Versions**

The English and French versions of this Act are equally authoritative

**58. In Force**

Subject to section 59, this Act shall come into force on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada

**59. Special Date**

(1) Section 23 (1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada

(2) A proclamation under sub-section (1) shall be issued only where authorized by the legislative assembly or Government of Quebec

(3) This section may be repealed on the day section 23 (1)(a) comes into force in respect of Quebec and this Act amended and renumbered, consequentially up the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada

**60. Constitution Acts**

This Act may be cited as the Constitution Act, 1982, and the Constitution Acts 1867 to 1975 and this Act may be cited together as the Constitution Acts, 1867 to 1982

**61. Constitution Amendment Proclamation**

A reference to the "Constitution Acts, 1867 to 1982" shall be deemed to include a reference to the "Constitution Amendment Proclamation, 1983"

*(Schedule not reproduced)*

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# 10

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## CONSTITUTION OF PEOPLE'S REPUBLIC OF CHINA

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{Adopted on 4 Dec 1982}

### PREAMBLE

China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition.

Feudal China was gradually reduced after 1840 to a semi-colonial and semi-feudal country. The Chinese people waged wave upon wave of heroic struggles for national independence and liberation and for democracy and freedom. Great and earth-shaking historical changes have taken place in China in the 20th century. The Revolution of 1911, led by Dr. Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the Chinese people had yet to fulfill their historical task of overthrowing imperialism and feudalism.

After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism, and bureaucrat-capitalism, won the great victory of the new democratic revolution and founded the People's Republic of China. Thereupon the Chinese people took state power into their own hands and became masters of the country.

After the founding of the People's Republic, the transition of Chinese society from a new democratic to a socialist society was effected step by step. The socialist transformation of the private ownership of the means of production was completed, the system of exploitation of man by man

eliminated and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed. The Chinese people and the Chinese People's Liberation Army have thwarted aggression, sabotage, and armed provocations by imperialists and hegemonists, safeguarded China's national independence and security and strengthened its national defence. Major successes have been achieved in economic development. An independent and fairly comprehensive socialist system of industry has in the main been established. There has been a marked increase in agricultural production. Significant progress has been made in educational, scientific, cultural, and other undertakings, and socialist ideological education has yielded noteworthy results. The living standards of the people have improved considerably.

Both the victory of China's new democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships. The basic task of the nation in the years to come is to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system, and work hard and self-reliantly to modernize industry, agriculture, national defence, and science and technology step by step to turn China into a socialist country with a high level of culture and democracy.

The exploiting classes as such have been eliminated in our country. However, class struggle will continue to exist within certain limits for a long time to come. The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.

Taiwan is part of the sacred territory of the People's Republic of China. It is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland.

In building socialism it is imperative to rely on the workers, peasants and intellectuals and unite with all the forces that can be united. In the long years of revolution and construction, there has been formed under the leadership of the Communist Party of China a broad patriotic united front that is composed of democratic parties and people's organizations and embraces all socialist working people, all patriots who support socialism and all patriots who stand for reunification of the motherland. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference is a broadly representative organization of the united front, which has played a significant historical role and will continue to do so in the political and social life of the country, in promoting friendship with the

people of other countries and in the struggle for socialist modernization and for the reunification and unity of the country

The People's Republic of China is a unitary multinational State built up jointly by the people of all its nationalities. Socialist relations of equality, unity and mutual assistance have been established among them and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local national chauvinism. The State does its utmost to promote the common prosperity of all nationalities in the country.

China's achievements in revolution and construction are inseparable from support by the people of the world. The future of China is closely linked with that of the whole world. China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries. China consistently opposes imperialism, hegemonism, and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress.

This Constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the State in legal form. It is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all State organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.

## **CHAPTER ONE**

### **GENERAL PRINCIPLES**

#### **1. Socialist State**

The People's Republic of China is a socialist State under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.

(2) The socialist system is the basic system of the People's Republic of China. Sabotage of the socialist system by any organization or individual is prohibited.

#### **2. Sovereignty**

- (1) All power in the People's Republic of China belongs to the people.
- (2) The organs through which the people exercise state power are the

National People's Congress and the local people's congresses at different levels

(3) The people administer State affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law

### 3. Democratic Centralism

(1) The State organs of the People's Republic of China apply the principle of democratic centralism

(2) The National People's Congress and the local people's congresses at different levels are instituted through democratic election. They are responsible to the people and subject to their supervision.

(3) All administrative, judicial and procuratorial organs of the State are created by the people's congresses to which they are responsible and under whose supervision they operate.

(4) The division of functions and powers between the central and local State organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

### 4. Nationalities, Minorities, Regions, Languages

(1) All nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity, and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited, any acts that undermine the unity of the nationalities or instigate their secession are prohibited. The State helps the areas inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities.

(2) Regional autonomy is practiced in areas where people of minority nationalities live in compact communities, in these areas organs of self-government are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the People's Republic of China.

(3) The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.

### 5. Socialist Legal System, Rule of Law

(1) The State upholds the uniformity and dignity of the socialist legal system.

(2) No law or administrative or local rules and regulations shall contravene the Constitution.

(3) All State organs, the armed forces, all political parties and public organizations, and all enterprises and undertakings must abide by the

Constitution and the law All acts in violation of the Constitution and the law must be looked into

(4) No organization or individual may enjoy the privilege of being above the Constitution and the law

## 6. Socialist Public Ownership

(1) The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people

(2) The system of socialist public ownership supersedes the system of exploitation of man by man, it applies the principle of "from each according to his ability to each according to his work"

## 7. State Economy

The State economy is the sector of socialist economy under ownership by the whole people, it is the leading force in the national economy The State ensures the consolidation and growth of the State economy

## 8. Agriculture

(1) Rural people's communes, agricultural producers co-operatives, and other forms of co-operative economy such as producers', supply and marketing, credit, and consumers' co-operatives, belong to the sector of socialist economy under collective ownership by the working people Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately owned livestock

(2) The various forms of co-operative economy in the cities and towns, such as those in the handicraft, industrial, building, transport, commercial, and service trades, all belong to the sector of socialist economy under collective ownership by the working people

(3) The State protects the lawful rights and interests of the urban and rural economic collectives and encourages, guides, and helps the growth of the collective economy

## 9. Resources

(1) Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches, and other natural resources are owned by the State, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land, and beaches that are owned by collectives in accordance with the law

(2) The State ensures the rational use of natural resources and protects rare animals and plants The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited

**10. Land Ownership**

(1) Land in the cities is owned by the State

(2) Land in the rural and suburban areas is owned by collectives except for those portions which belong to the State in accordance with the law, house sites and privately farmed plots of cropland and hilly land are also owned by collectives

(3) The State may in the public interest take over land for its use in accordance with the law

(4) no organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.

(5) All organizations and individuals who use land must make rational use of the land

**11. Private Sector of the Economy**

(1) The individual economy of urban and rural working people, operated within the limits prescribed by law, is a complement to the socialist public economy. The State protects the lawful rights and interests of the individual economy

(2) The State guides, helps, and supervises the individual economy by exercising administrative control

(3) The State permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The State protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy

**12. Protection of Socialist Public Property**

(1) Socialist public property is sacred and inviolable

(2) The State protects socialist public property. Appropriation or damage of State or collective property by any organization or individual by whatever means is prohibited

**13. Protection of Private Property**

(1) The State protects the right of citizens to own lawfully earned income, savings, houses, and other lawful property

(2) The State protects by law the right of citizens to inherit private property

**14. Labour Productivity**

(1) The State continuously raises labour productivity, improves economic results and develops the productive forces by enhancing the enthusiasm of the working people, raising the level of their technical skill, disseminating advanced science and technology, improving the systems of economic administration and enterprise, operation and management, instituting the socialist system of responsibility in various forms, and improving organization of work

(2) The State practices strict economy and combats waste

(3) The State properly apportions accumulation and consumption, pays attention to the interests of the collective and the individual as well as of the State and, on the basis of expanded production, gradually improves the material and cultural life of the people

### **15. Economic Planning**

(1) The State practices economic planning on the basis of socialist public ownership. It ensures the proportionate and co-ordinated growth of the national economy through overall balancing by economic planning and the supplementary role of regulation by the market.

(2) Disturbance of the orderly functioning of the social economy or disruption of the State economic plan by any organization or individual is prohibited.

### **16. State Enterprises**

(1) State enterprises have decision making power in operation and management within the limits prescribed by law, on condition that they submit to unified leadership by the State, and fulfill all their obligations under the State plan.

(2) State enterprises practice democratic management through congresses of workers and staff and in other ways in accordance with the law.

### **17. Collective Economic Organizations**

(1) Collective economic organizations have decision making power in conducting independent economic activities, on condition that they accept the guidance of the State plan and abide by the relevant laws.

(2) Collective economic organizations practice democratic management in accordance with the law, with the entire body of their workers electing or removing their managerial personnel and deciding on major issues concerning operation and management.

### **18. Foreign Enterprises**

(1) The People's Republic of China permits foreign enterprises, other foreign economic organizations, and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China.

(2) All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.

### **19. Education**

(1) The State develops socialist educational undertakings and works to raise the scientific and cultural level of the whole nation.

(2) The State runs schools of various types, makes primary education

compulsory and universal, develops secondary, vocational and higher education, and promotes pre-school education

(3) The State develops educational facilities of various types in order to wipe out illiteracy and provide political, cultural, scientific, technical, and professional education for workers, peasants, State functionaries and other working people. It encourages people to become educated through independent study.

(4) The State encourages the collective economic organizations, State enterprises and undertakings, and other social forces to set up educational institutions of various types in accordance with the law.

(5) The State promotes the nationwide use of Putonghua.

## 20. Science

The State promotes the development of the natural and social sciences, disseminates scientific and technical knowledge, and commends and rewards achievements in scientific research as well as technological discoveries and inventions.

## 21. Health

(1) The State develops medical and health services, promotes modern medicine and traditional Chinese medicine, encourages and supports the setting up of various medical and health facilities by the rural economic collectives, State enterprises and undertakings and neighborhood organizations, and promotes public health activities of a mass character, all to protect the people's health.

(2) The State develops physical culture and promotes mass sports activities to build up the people's physique.

## 22. Culture

(1) The State promotes the development of literature and art, the press, broadcasting, and television undertakings, publishing and distribution services, libraries, museums, cultural centers and other cultural undertakings, that serve the people and socialism, and sponsors mass cultural activities.

(2) The State protects places of scenic and historical interest, valuable cultural monuments, and treasures and other important items of China's historical and cultural heritage.

## 23. Intellectual Education

The State trains specialized personnel in all fields who serve socialism, increases the number of intellectuals, and creates conditions to give full scope to their role in collective modernization.

## 24. Socialist Education

(1) The State strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education, and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas.

The State protects the work of the people of the material life, people of labour of science and of culture. It educates the people in political, cultural, intellectual and scientific and in physical and technical education. It creates a modern socialist social and cultural life.

### 15. Family Planning

The State promotes family planning as the population policy in the plan for economic and social development.

### 16. Environment

The State protects and improves the living environment and the ecological environment and prevents and controls pollution and other public hazards.

The State protects and encourages afforestation and the protection of forests.

### 17. Administration

All State organs carry out the principle of simple and efficient administration, the system of responsibility for work and the system of training, remuneration and appraisal; they work to better economy in expenditure, quality of work and efficiency and reduce bureaucracy.

All State organs and administrative personnel in the support of the people have to close work with them, lead their opinions and suggestions, accept the supervision and work hard to serve them.

### 18. Public Order

The State maintains public order and suppresses terrorism and the counter-revolutionary, criminal, or separatist forces that endanger public security and disrupt the socialist economy and other socialist activities in production and national economy.

### 19. Armed Forces

The armed forces of the People's Republic of China belong to the people. They have the mission to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction and work hard to serve the people.

The State strengthens the recruitment, mobilization and regulation of the armed forces in order to enhance the national defence capability.

### 20. Administrative Division

The administrative division of the People's Republic of China is as follows:

1. The country is divided into provinces, autonomous regions and municipalities directly under the Central Government.

2. Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties and cities.

3 Counties and autonomous counties are divided into townships, nationality townships, and towns

(2) Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities

(3) All autonomous regions, autonomous prefectures, and autonomous counties are national autonomous areas

### 31. Special Administrative Regions

The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions

### 32. Rights of Foreigners

(1) The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of the People's Republic of China

(2) The People's Republic of China may grant asylum to foreigners who request it for political reasons

## CHAPTER TWO

## THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

### 33. Citizenship, Equality

(1) All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China

(2) All citizens of the People's Republic of China are equal before the law

(3) Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law

### 34. Electoral Rights and Equality

All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law

35. Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration

### 36. Religion

(1) Citizens of the People's Republic of China enjoy freedom of religious belief

(2) No State organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion, nor may they

discriminate against citizens who believe in, or do not believe in, any religion

(3) The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State.

(4) Religious bodies and religious affairs are not subject to any foreign domination.

### **37. Personal Freedom**

(1) The personal freedom of citizens of the People's Republic of China is inviolable.

(2) No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

(3) Unlawful deprivation or restriction of citizens' personal freedom by detention or other means is prohibited, and unlawful search of the person of citizens is prohibited.

### **38. Personal Dignity**

The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.

### **39. Home**

The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited.

### **40. Correspondence**

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence except in cases where, to meet the needs of State security or of investigation into criminal offenses, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

### **41. Freedom of Speech**

(1) Citizens of the People's Republic of China have the right to criticize and make suggestions to any State organ or functionary. Citizens have the right to make to relevant State organs complaints and charges against, or exposures of, any State organ or functionary for violation of the law or dereliction of duty, but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

(2) The State organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.

(3) Citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law

#### 42. Work

(1) Citizens of the People's Republic of China have the right as well as the duty to work

(2) Using various channels, the State creates conditions for employment, strengthens labour protection, improves working conditions, and, on the basis of expanded production, increases remuneration for work and social benefits

(3) Work is the glorious duty of every able-bodied citizen. All working people in State enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labour emulation, and commends and rewards model and advanced workers. The State encourages citizens to take part in voluntary labour.

(4) The State provides necessary vocational training to citizens before they are employed.

#### 43. Leisure

(1) Working people in the People's Republic of China have the right to rest.

(2) The State expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

#### 44. Retirement

The State prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of State. The livelihood of retired personnel is ensured by the State and society.

#### 45. Social Security

(1) Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill, or disabled. The State develops the social insurance, social relief, and medical and health services that are required to enable citizens to enjoy this right.

(2) The State and society ensure the livelihood of disabled members of the armed forces, provide pensions for the families of martyrs, and give preferential treatment to the families of military personnel.

(3) The State and society help make arrangements for the work, livelihood and education of the blind, deafmutes and other handicapped citizens.

#### 46. Education

(1) Citizens of the People's Republic of China have the duty as well as the right to receive education.

(2) The State promotes the all-round moral, intellectual, and physical development of children and young people.

**47. Research**

Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation, and other cultural pursuits. The State encourages and assists creative endeavors conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art, and other cultural work.

**48. Gender Equality**

(1) Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural, and social, including family life.

(2) The State protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike, and trains and selects cadres from among women.

**49. Marriage, Family, Parentage**

(1) Marriage, the family, and mother and child are protected by the State.

(2) Both husband and wife have the duty to practice family planning.

(3) Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents.

(4) Violation of the freedom of marriage is prohibited. Maltreatment of old people, women, and children is prohibited.

**50. Nationals Abroad**

The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

**51. Interest of the State**

The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the State, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.

**52. Unity**

It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

**53. Obedience to the Constitution**

Citizens of the People's Republic of China must abide by the Constitution and the law, keep State secrets, protect public property, and observe labour discipline and public order and respect social ethics.

**54. Integrity of the Motherland**

It is the duty of citizens of the People's Republic of China to safeguard the security, honor, and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland.

**55. Defence**

(1) It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression

(2) It is the honorable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law

**56. Taxation**

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law

### **CHAPTER THREE**

### **THE STRUCTURE OF THE STATE**

#### **Section I--The National People's Congress**

**57. Highest Organ of State Power**

The National People's Congress of the People's Republic of China is the highest organ of State power. Its permanent body is the Standing Committee of the National People's Congress.

**58. Legislative Power**

The National People's Congress and its Standing Committee exercise the legislative power of the State.

**59. Representation**

(1) The National People's Congress is composed of deputies elected by the provinces, autonomous regions, and municipalities directly under the Central Government, and by the armed forces. All the minority nationalities are entitled to appropriate representation.

(2) Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress.

(3) The number of deputies to the National People's Congress and the manner of their election are prescribed by law.

**60. Election, Term**

(1) The National People's Congress is elected for a term of five years.

(2) Two months before the expiration of the term of office of a National People's Congress, its Standing Committee must ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress and the term of office of the current National People's Congress may be extended. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances.

**61. Sessions, Presidium**

(1) The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies to the National People's Congress so propose.

(2) When the National People's Congress meets, it elects a presidium to conduct its session.

**62. Functions and Powers**

The National People's Congress exercises the following functions and powers:

- 1 to amend the Constitution,
- 2 to supervise the enforcement of the Constitution,
- 3 to enact and amend basic statutes concerning criminal offenses, civil affairs, the State organs, and other matters,
- 4 to elect the President and the Vice-President of the People's Republic of China,
- 5 to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and to decide on the choice of the Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions, and the Auditor General and the Secretary General of the State Council upon nomination by the Premier,
- 6 to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all the others on the Central Military Commission,
- 7 to elect the President of the Supreme People's Court,
- 8 to elect the Procurator General of the Supreme People's Procuratorate,
- 9 to examine and approve the plan for national economic and social development and the report on its implementation,
- 10 to examine and approve the State budget and the report on its implementation,
- 11 to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress,
- 12 to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government,
- 13 to decide on the establishment of special administrative regions and the systems to be instituted there,
- 14 to decide on questions of war and peace, and
- 15 to exercise such other functions and powers as the highest organ of State power should exercise.

**63. Power to Recall or Remove Officials**

The National People's Congress has the power to recall or remove from office the following persons:

- 1 the President and the Vice-President of the People's Republic of China,
- 2 the Premier, Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions, and the Auditor General and the Secretary General of the State Council,
- 3 the Chairman of the Central Military Commission and others on the Commission,
- 4 the President of the Supreme People's Court, and
- 5 the Procurator General of the Supreme People's Procuratorate

#### 64. Amendments to the Constitution

(1) Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a majority vote of more than two-thirds of all the deputies to the Congress

(2) Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the National People's Congress

#### 65. Standing Committee

(1) The Standing Committee of the National People's Congress is composed of the following the Chairman, the Vice-Chairman, the Secretary General, and members

(2) Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress

(3) The National People's Congress elects, and has the power to recall, all those on its Standing Committee

(4) No one on the Standing Committee of the National People's Congress shall hold any post in any of the administrative, judicial or procuratorial organs of the state

#### 66. Election, Term, Chairmen

(1) The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress, it exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress

(2) The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms

#### 67. Functions and Powers

The Standing Committee of the National People's Congress exercises the following functions and powers

- 1 to interpret the Constitution and supervise its enforcement,
- 2 to enact and amend statutes with the exception of those which should be enacted by the National People's Congress,
- 3 to enact, when the National People's Congress is not in session, partial supplements and amendments to statutes enacted by the National

People's Congress provided that they do not contravene the basic principles of these statutes,

4 to interpret statutes,

5 to examine and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the State budget that prove necessary in the course of their implementation,

6 to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court, and the Supreme People's Procuratorate,

7 to annul those administrative rules and regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes,

8 to annul those local regulations or decisions of the organs of State power or provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations,

9 to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of Ministries or Commissions or the Auditor General and the Secretary General of the State Council upon nomination by the Premier of the State Council,

10 to decide, upon nomination by the Chairman of the Central Military Commission, on the choice of others on the Commission, when the National People's Congress is not in session,

11 to appoint and remove Vice-Presidents and Judges of the Supreme People's Court, members of its Judicial Committee, and the President of the Military Court at the suggestion of the President of the Supreme People's Court,

12 to appoint and remove Deputy Procurators General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee, and the Chief Procurator of the Military Procuratorate at the suggestion of the Procurator General of the Supreme People's Procuratorate, and to approve the appointment and removal of the Chief Procurators of the People's Procuratorates of provinces, autonomous regions and municipalities directly under the Central Government,

13 to decide on the appointment and recall of plenipotentiary representatives abroad,

14 to decide on the ratification and abrogation of treaties and important agreements concluded with foreign states,

15 to institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks,

16 to institute State medals and titles of honor and decide on their conferment,

17 to decide on the granting of special pardons,

18 to decide, when the National People's Congress is not in session, on the proclamation of a State of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defence against aggression,

19 to decide on general mobilization or partial mobilization,

20 to decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government, and

21 to exercise such other functions and powers as the National People's Congress may assign to it

#### 68. Presidency

(1) The Chairman of the Standing Committee of the National People's Congress presides over the work of the Standing Committee and convenes its meetings. The Vice-Chairman and the Secretary General assist in the work of the Chairman. (2) Executive meetings with the participation of the Chairman, Vice-Chairman and Secretary General handle the important day-to-day work of the Standing Committee of the National People's Congress.

#### 69. Report on the Work

The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

#### 70. Committees

(1) The National People's Congress establishes a Nationalities Committee, a Law Committee, a Financial and Economic Committee, an Education, Science, Culture, and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee, and such other special committees as are necessary. These special committees work under the direction of the Standing Committee of the National People's Congress when the Congress is not in session.

(2) The special committees examine, discuss and draw up relevant Bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

#### 71. Ad Hoc Committees

(1) The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports.

(2) All organs of State, public organizations, and citizens concerned are obliged to supply the necessary information to those committees of inquiry when they conduct investigations.

#### 72. Legislative Initiative

Deputies to the National People's Congress and all those on its Standing

Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee

### **73. Right to Question the State Council**

Deputies to the National People's Congress during its sessions, and all those on its Standing Committee during its meetings, have the right to address questions, in accordance with procedures prescribed by law, to the State Council or the Ministries and Commissions under the State Council, which must answer the questions in a responsible manner

### **74. Immunity**

No deputy to the National People's Congress may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the National People's Congress is not in session, without the consent of its Standing Committee

### **75. Indemnity**

Deputies to the National People's Congress may not be called to legal account for their speeches or votes at its meetings

### **76. Obedience to the Constitution**

(1) Deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and the law and keeping State secrets and, in production and other work and their public activities, assist in the enforcement of the Constitution and the law

(2) Deputies to the National People's Congress should maintain close contact with the units which elected them and with the people, listen to and convey the opinions and demands of the people, and work hard to serve them

### **77. Direct/Imperative Mandate**

Deputies to the National People's Congress are subject to the supervision of the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall deputies whom they elected

### **78. Organizational Law**

The organization and working procedures of the National People's Congress and its Standing Committee are prescribed by law

## **Section II—The President**

### **79. Election, Term**

(1) The President and Vice-President of the People's Republic of China are elected by the National People's Congress

(2) Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice-President of the People's Republic of China

(3) The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms

#### **80. Functions and Powers**

The President of the People's Republic of China, in pursuance of decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints and removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions, and the Auditor General and the Secretary General of the State Council, confers State medals and titles of honor, issues orders of special pardons, proclaims martial law, proclaims a State of war, and issues mobilization orders

#### **81. Diplomatic Representation**

The President of the People's Republic of China receives foreign diplomatic representatives on behalf of the People's Republic of China and, in pursuance of decisions of the Standing Committee of the National People's Congress, appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states

#### **82. Vice-President**

(1) The Vice-President of the People's Republic of China assists in the work of the President

(2) The Vice-President of the People's Republic of China may exercise such parts of the functions and powers of the President as may be deputed by the President

#### **83. End of Office**

The President and Vice-President of the People's Republic of China exercise their functions and powers until the new President and Vice-President elected by the succeeding National People's Congress assume office

#### **84. Vacancy**

(1) In case the office of the President of the People's Republic of China falls vacant, the Vice-President succeeds to the office of President

(2) In case the office of the Vice President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice-President to fill the vacancy

(3) In the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice-President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China

### Section III—The State Council

#### 85. Governmental Powers

The State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the highest organ of State power, it is the highest organ of State administration

#### 86. Composition

(1) The State Council is composed of the following the Premier, the Vice-Premiers, the State Councillors, the Ministers in charge of ministries, the Ministers in charge of Commissions, the Auditor General, and the Secretary General

(2) The Premier has overall responsibility for the State Council The Ministers have overall responsibility for the Ministries or Commissions under their charge

(3) The organization of the State Council is prescribed by law

#### 87 Term

(1) The term of office of the State Council is the same as that of the National People's Congress

(2) The Premier, Vice-Premiers, and State Councillors shall serve no more than two consecutive terms

#### 88 Premier

(1) The Premier directs the work of the State Council The Vice-Premiers and State Councillors assist in the work of the Premier

(2) Executive meetings of the State Council are composed of the Premier, the Vice-Premiers, the State Councillors, and the Secretary General of the State Council

(3) The Premier convenes and presides over the executive meetings and plenary meetings of the State Council

#### 89. Functions and Powers

The State Council exercises the following functions and powers

1 to adopt administrative measures, enact administrative rules and regulations, and issue decisions and orders in accordance with the Constitution and the statutes,

2 to submit proposals to the National People's Congress or its Standing Committee,

3 to lay down the tasks and responsibilities of the Ministries and Commissions of the State Council, to exercise unified leadership over the work of the Ministries and Commissions, and to direct all other administrative work of a national character that does not fall within the jurisdiction of the Ministries and Commissions,

4 to exercise unified leadership over the work of local organs of State administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central

Government and the organs of State administration of provinces, autonomous regions, and municipalities directly under the Central Government,

5 to draw up and implement the plan for national economic and social development and the State budget,

6 to direct and administer economic affairs and urban and rural development,

7 to direct and administer affairs of education, science, culture, public health, physical culture, and family planning,

8 to direct and administer civil affairs, public security, judicial administration, supervision, and other related matters,

9 to conduct foreign affairs and conclude treaties and agreements with foreign states,

10 to direct and administer the building of national defence,

11 to direct and administer affairs concerning the nationalities, and to safeguard the equal rights of minority nationalities and the right of autonomy of the national autonomous areas,

12 to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad,

13 to alter or annul inappropriate orders, directives, and regulations issued by the Ministries or Commissions,

14 to alter or annul inappropriate decisions and orders issued by local organs of State administration at different levels,

15 to approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities,

16 to decide on the enforcement of martial law in parts of provinces, autonomous regions, and municipalities directly under the Central Government,

17 to examine and decide on the size of administrative organs and, in accordance with the law, to appoint, remove, and train administrative officers, appraise their work and reward or punish them, and

18 to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign it.

#### 90. Ministers

(1) The Ministers in charge of Ministries or Commissions of the State Council are responsible for the work of their respective departments and convene and preside over ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments

(2) The Ministries and Commissions issue orders, directives, and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions, and orders issued by the State Council

### **91. Auditing Body**

(1) The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of the State financial and monetary organizations and of enterprises and undertakings

(2) Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual

### **92. Report on the Work**

The State Council is responsible, and reports on its work, to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee

## **Section IV—The Central Military Commission**

### **93. Function, Composition, Term**

(1) The Central Military Commission of the People's Republic of China directs the armed forces of the country

(2) The Central Military Commission is composed of the following the Chairman, the Vice-Chairmen, and members

(3) The Chairman of the Central Military Commission has overall responsibility for the Commission

(4) The term of office of the Central Military Commission is the same as that of the National People's Congress

### **94. Responsibility**

The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee

## **Section V—The Local People's Congresses and Governments**

### **95. Local Governments**

(1) People's Congresses and People's Governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns

(2) The organization of local People's Congresses and local People's Governments at different levels is prescribed by law

(3) Organs of self-government are established in autonomous regions, autonomous prefectures, and autonomous counties. The organization and

working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections V and VI of Chapter Three of the Constitution

#### 96. State Power, Standing Committees

(1) Local People's Congresses at different levels are local organs of State power

(2) Local People's Congresses at and above the county level establish Standing Committees

#### 97. Deputies

(1) Deputies to the People's Congresses of provinces, municipalities directly under the Central Government, and cities divided into districts are elected by the People's Congresses at the next lower level, deputies to the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies

(2) The number of deputies to local People's Congresses at different levels and the manner of their election are prescribed by law

#### 98. Term

The term of office of the People's Congresses of provinces, municipalities directly under the Central Government and cities divided into districts is five years. The term of office of the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns is three years

#### 99. Obedience to the Constitution

(1) Local People's Congresses at different levels ensure the observance and implementation of the Constitution, the statutes and the administrative rules and regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for the development of public services

(2) Local People's Congresses at and above the county level examine and approve the plans for economic and social development and the budgets of their respective administrative areas, and examine and approve reports on their implementation. They have the power to alter or annul inappropriate decisions of their own Standing Committees

(3) The People's Congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the peculiarities of the nationalities concerned

#### 100. Obedience to the Central Government

The People's Congresses of provinces and municipalities directly under the Central Government, and their Standing Committees, may adopt local regulations, which must not contravene the Constitution, the statutes, and the

(2) The Ministries and Commissions issue orders, directives, and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions, and orders issued by the State Council

### **91 Auditing Body**

(1) The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of the State financial and monetary organizations and of enterprises and undertakings

(2) Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual

### **92. Report on the Work**

The State Council is responsible, and reports on its work, to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee

## **Section IV—The Central Military Commission**

### **93. Function, Composition, Term**

(1) The Central Military Commission of the People's Republic of China directs the armed forces of the country

(2) The Central Military Commission is composed of the following the Chairman, the Vice-Chairmen, and members

(3) The Chairman of the Central Military Commission has overall responsibility for the Commission

(4) The term of office of the Central Military Commission is the same as that of the National People's Congress

### **94. Responsibility**

The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee

## **Section V—The Local People's Congresses and Governments**

### **95 Local Governments**

(1) People's Congresses and People's Governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns

(2) The organization of local People's Congresses and local People's Governments at different levels is prescribed by law

(3) Organs of self-government are established in autonomous regions, autonomous prefectures, and autonomous counties The organization and

working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections V and VI of Chapter Three of the Constitution

#### **96. State Power, Standing Committees**

(1) Local People's Congresses at different levels are local organs of State power.

(2) Local People's Congresses at and above the county level establish Standing Committees

#### **97. Deputies**

(1) Deputies to the People's Congresses of provinces, municipalities directly under the Central Government, and cities divided into districts are elected by the People's Congresses at the next lower level, deputies to the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies

(2) The number of deputies to local People's Congresses at different levels and the manner of their election are prescribed by law.

#### **98. Term**

The term of office of the People's Congresses of provinces, municipalities directly under the Central Government and cities divided into districts is five years. The term of office of the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns is three years

#### **99. Obedience to the Constitution**

(1) Local People's Congresses at different levels ensure the observance and implementation of the Constitution, the statutes and the administrative rules and regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for the development of public services

(2) Local People's Congresses at and above the county level examine and approve the plans for economic and social development and the budgets of their respective administrative areas, and examine and approve reports on their implementation. They have the power to alter or annul inappropriate decisions of their own Standing Committees.

(3) The People's Congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the peculiarities of the nationalities concerned

#### **100. Obedience to the Central Government**

The People's Congresses of provinces and municipalities directly under the Central Government, and their Standing Committees, may adopt local regulations, which must not contravene the Constitution, the statutes, and the

administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record

### **101. Power to Elect and Recall Officials**

(1) At their respective levels, local People's Congresses elect, and have the power to recall, Governors and Deputy-Governors, or Mayors and Deputy-Mayors, or heads and deputy heads of counties, districts, townships, and towns

(2) Local People's Congresses at and above the county level elect, and have the power to recall, Presidents of People's Courts and Chief Procurators of People's Procuratorates at the corresponding level. The election or recall of Chief Procurators of People's Procuratorates shall be reported to the Chief Procurators of the People's Procuratorates at the next higher level for submission to the Standing Committees of the People's Congresses at the corresponding level for approval

### **102. Direct/Imperative Mandate**

(1) Deputies to the People's Congresses of provinces, municipalities directly under the Central Government and cities divided into districts are subject to supervision by the units which elected them, deputies to the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are subject to supervision by their constituencies

(2) The electoral units and constituencies which elect deputies to local People's Congresses at different levels have the power, according to procedures prescribed by law, to recall deputies whom they elected

### **103. Responsibility of Standing Committees**

(1) The Standing Committee of a local People's Congress at and above the county level is composed of a Chairman, Vice-Chairmen and members, and is responsible, and reports on its work, to the People's Congress at the corresponding level

(2) The local People's Congress at and above the county level elects, and has the power to recall, anyone on the Standing Committee of the People's Congress at the corresponding level

(3) No one on the Standing Committee of a local People's Congress at and above the county level shall hold any post in State administrative, judicial, and procuratorial organs

### **104. Functions and Powers**

The Standing Committee of a Local People's Congress at and above the county level discusses and decides on major issues in all fields of work in its administrative area, supervises the work of the People's Government, People's Court and People's Procuratorate at the corresponding level, annuls inappropriate decisions and orders of the People's Government at the corresponding level, annuls inappropriate resolutions of the People's

Congress at the next lower level, decides on the appointment and removal of functionaries of State organs within the limits of its authority as prescribed by law, and, when the People's Congress at the corresponding level is not in session, recalls individual deputies to the People's Congress at the next higher level and elects individual deputies to fill vacancies in that People's Congress

#### 105. Executive Bodies

(1) Local People's Governments at different levels are the executive bodies of local organs of State power as well as the local organs of State administration at the corresponding level

(2) Local People's Governments at different levels practice the system of overall responsibility by Governors, Mayors, county heads, district heads, township heads, and town heads

#### 106. Corresponding Terms

The term of office of local People's Governments at different levels is the same as that of the People's Congresses at the corresponding level

#### 107. Administrative Work

(1) Local People's Governments at and above the county level, within the limits of their authority as prescribed by law, conduct the administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, supervision, and family planning in their respective administrative areas, issue decisions and orders, appoint, remove, and train administrative functionaries, appraise their work and reward or punish them

(2) People's Governments of townships, nationality townships, and towns carry out the resolutions of the People's Congress at the corresponding level as well as the decisions and orders of the State administrative organs at the next higher level and conduct administrative work in their respective administrative areas

(3) People's Governments of provinces and municipalities directly under the Central Government decide on the establishment and geographic division of townships, nationality townships, and towns

#### 108. Hierarchy of Government

Local People's Governments at and above the county level direct the work of their subordinate departments and of People's Governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and People's Governments at lower levels

#### 109. Auditing Bodies

Auditing bodies are established by local People's Governments at and above the county level. Local auditing bodies at different levels independently exercise their power to supervise through auditing in accordance with the law and are responsible to the People's Government at the corresponding level and to the auditing body at the next higher level

**110. Responsibility**

(1) Local People's governments at different levels are responsible, and report on their work, to People's Congresses at the corresponding level. Local People's Governments at and above the county level are responsible, and report on their work, to the Standing Committee of the People's Congress at the corresponding level when the Congress is not in session.

(2) Local People's Governments at different levels are responsible, and report on their work, to the State administrative organs at the next higher level. Local People's Governments at different levels throughout the country are State administrative organs under the unified leadership of the State Council and are subordinate to it.

**111 Committees on Grass Roots Level**

(1) The Residents' Committees and Villagers' Committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass roots level. The Chairman, Vice-Chairmen and members of each Residents' or Villagers' Committee are elected by the residents. The relationship between the Residents' and Villagers' Committees and the grass roots organs of State power is prescribed by law.

(2) The Residents' and Villagers' Committees establish committees for People's mediation, public security, public health, and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order, and convey residents' opinions and demands and make suggestions to the People's government.

**Section VI—Self-Government of National Autonomous Areas****112. Autonomies Areas**

The organs of self-government of national autonomous areas are the People's Congresses and People's Governments of autonomous regions, autonomous prefectures, and autonomous counties.

**113. Representation**

(1) In the People's Congress of an autonomous region, prefecture or county, in addition to the deputies of the nationality or nationalities exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

(2) The Chairmanship and Vice-Chairmanships of the Standing Committee of the People's Congress of an autonomous region, prefecture or county shall include a citizen or citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

**114. Nationality of the Administrative Head**

The administrative head of an autonomous region, prefecture or county shall be a citizen of the nationality, or of one of the nationalities, exercising regional autonomy in the area concerned.

**115. Power of Autonomy**

The organs of self-government of autonomous regions, prefectures, and counties exercise the functions and powers of local organs of State as specified in Section V of Chapter Three of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the law of regional national autonomy and other laws, and implement the laws and policies of the State in the light of the existing local situation.

**116. Autonomy Regulations**

People's Congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic, and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the Standing Committees of the People's Congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

**117. Financial Autonomy**

The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the State shall be managed and used by the organs of self-government of those areas on their own.

**118. Autonomous Development Plans**

(1) The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of State plans.

(2) In exploiting natural resources and building enterprises in the national autonomous areas, the State shall give due consideration to the interests of those areas.

**119. Autonomous Education**

The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health, and physical culture affairs in their respective areas, protect and accumulate the cultural heritage of the nationalities and work for the development and flourishing of their cultures.

**120. Autonomous Security Forces**

The organs of self-government of the national autonomous areas may, in accordance with the military system of the State and concrete local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

**121. Autonomous Language**

In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality

**122. Minorities**

(1) The State gives financial, material, and technical assistance to the minority nationalities to accelerate their economic and cultural development

(2) The State helps the national autonomous areas train large numbers of cadres at different levels and specialized personnel and skilled workers of different professions and trades from among the nationality or nationalities in those areas

**Section VII—The People's Courts and Procuratorates****123. Judicial Organs**

The People's Courts in the People's Republic of China are the judicial organs of the State

**124. Supreme People's Court**

(1) The People's Republic of China establishes the Supreme People's Court and the local People's Courts at different levels, Military Courts and other special People's Courts

(2) The term of office of the President of the Supreme People's Court is the same as that of the National People's Congress, the President shall serve no more than two consecutive terms

(3) The organization of People's Courts is prescribed by law

**125. Publicity, Right of Defence**

All cases handled by the People's Courts, except for those involving special circumstances as specified by law, shall be heard in public. The accused has the right of defence

**126. Independence**

The People's Courts shall, in accordance with the law exercise judicial power independently and are not subject to interference by administrative organs, public organizations, or individuals

**127. Highest Judicial Organ**

(1) The Supreme People's Court is the highest judicial organ

(2) The Supreme People's Court supervises the administration of justice by the local People's Courts at different levels and by the Special People's Courts, People's Courts at higher levels supervise the administration of justice by those at lower levels

**128. Responsibility of the Supreme People's Court**

The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local People's Courts at different levels are responsible to the organs of State power which created them.

**129. People's Procuratorates**

The People's Procuratorates of the People's Republic of China are State organs for legal supervision.

**130. Supreme People's Procuratorate**

(1) The People's Republic of China establishes the Supreme People's Procuratorate and the local People's Procuratorates at different levels, Military Procuratorates, and other Special People's Procuratorates.

(2) The term of office of the Procurator General of the Supreme People's Procuratorate is the same as that of the National People's Congress, the Procurator General shall serve no more than two consecutive terms.

(3) The organization of People's Procuratorates is prescribed by law.

**131. Procuratorial Power, Independence**

People's Procuratorates shall, in accordance with the law, exercise procuratorial power independently and are not subject to interference by administrative organs, public organizations, or individuals.

**132. Highest Procuratorial Organ**

(1) The Supreme People's Procuratorate is the highest procuratorial organ.

(2) The Supreme People's Procuratorate directs the work of the local People's Procuratorates at different levels and of the Special People's Procuratorates. People's Procuratorates at higher levels direct the work of those at lower levels.

**133. Responsibility of Supreme People's Procuratorate**

The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. Local People's Procuratorates at different levels are responsible to the organs of State power at the corresponding levels which created them and to the People's Procuratorates at the higher level.

**134. Language in Trials**

(1) Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The People's Courts and People's Procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality.

(2) In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality, indictments, judgements, notices, and other documents should be written,

according to actual needs, in the language or languages in common use in the locality

### **135. Independence of Functions**

The People's Courts, People's Procuratorates, and public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall co-ordinate their efforts and check each other to ensure correct and effective enforcement of law

## **CHAPTER FOUR**

### **THE NATIONAL FLAG, EMBLEM, AND CAPITAL**

#### **136. National Flag**

The National Flag of the People's Republic of China is a red flag with five stars

#### **137. National Emblem**

The National Emblem of the People's Republic of China is Tian'anmen in the center illuminated by five stars and encircled by ears of grain and a cogwheel

#### **138. Capital**

The Capital of the People's Republic of China is Beijing

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# 11

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## CONSTITUTION OF KINGDOM OF DENMARK

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{Adopted on 5 June 1953}

### *PART I* GENERAL PROVISIONS

#### 1. Scope

This Constitution applies to all parts of the Kingdom of Denmark

#### 2. State Form

The form of Government shall be that of a constitutional monarchy The Royal Power is inherited by men and women in accordance with the provisions of the Succession to the Throne Act, 27th March, 1953

#### 3. State Powers

The legislative power is jointly vested in the King and the Parliament The executive power is vested in the King The judicial power is vested in the courts of justice

#### 4. State Church

The Evangelical Lutheran Church shall be the Established Church of Denmark, and, as such, it shall be supported by the State

### *PART II* THE KING

#### 5. Reigning no Other Countries

The King shall not reign in other countries except with the consent of the Parliament

**6. Member of the State Church**

The King shall be a member of the Evangelical Lutheran Church

**7 Of Age With 18 Years**

The King shall be of age when he has completed his eighteenth year The same provision shall apply to the Successor to the Throne

**8. Sworn on the Constitution**

The King, prior to his accession to the Throne, shall make a solemn Declaration in writing before the Council of State that he will faithfully adhere to the Constitution Act Two identical originals of the Declaration shall be executed, one of which shall be handed over to the Parliament to be preserved in its archives, and the other shall be filed in the Public Record Office Where the King, owing to his absence or for other reasons, is unable to sign the aforesaid Declaration immediately on his accession to the Throne, the Government shall, unless otherwise provided by Statute, be conducted by the Council of State until such Declaration has been signed Where the King already as Successor to the Throne has signed the aforesaid Declaration, he shall accede to the Throne immediately on its vacancy

**9 Vacancy of the Throne**

Provisions relating to the exercising of sovereign power in the event of the minority, illness, or absence of the King shall be laid down by Statute Where on the vacancy of the Throne there is no Successor to the Throne, the Parliament shall elect a King and establish the future order of succession to the Throne

**10. Civil List**

(1) The Civil List of the King shall be granted for the duration of his reign by Statute Such Statute shall also provide for the castles, palaces, and other State property which shall be placed at the disposal of the King for his use

(2) The Civil List shall not be chargeable with any debt

**11. Annuities**

Members of the Royal House may be granted annuities by Statute Such annuities shall not be enjoyed outside the Realm except with the consent of the Parliament

**PART III****POWERS OF THE KING****12. Supreme Authority**

Subject to the limitations laid down in this Constitution Act the King shall have the supreme authority in all the affairs of the Realm, and he shall exercise such supreme authority through the Ministers

**13. Responsibility of Ministers**

The King shall not be answerable for his actions; his person shall be sacrosanct. The Ministers shall be responsible for the conduct of the Government, their responsibility shall be determined by Statute.

**14. Appointing Ministers**

The King shall appoint and dismiss the Prime Minister and the other Ministers. He shall decide upon the number of Ministers and upon the distribution of the duties of Government among them. The signature of the King to resolutions relating to legislation and Government shall make such resolutions valid, provided that the signature of the King is accompanied by the signature or signatures of one or more Ministers. A Minister who has signed a resolution shall be responsible for the resolution.

**15. Vote of No Confidence**

(1) A Minister shall not remain in office after the Parliament has passed a vote of no confidence in him.

(2) Where the Parliament passes a vote of no confidence in the Prime Minister, he shall ask for the dismissal of the Ministry unless writs are to be issued for a general election. Where a vote of censure has been passed on a Ministry, or it has asked for its dismissal, it shall continue in office until a new Ministry has been appointed. Ministers who continue in office as aforesaid shall do only what is necessary for the purpose of the uninterrupted conduct of official business.

**16. Impeachment**

Ministers may be impeached by the King or the Parliament with maladministration of office. The High Court of the Realm shall try cases of impeachment brought against Ministers for maladministration of office.

**17. Council of State**

(1) The body of Ministers shall form the Council of State, in which the Successor to the Throne shall have a seat when he is of age. The Council of State shall be presided over by the King except in the instance mentioned in section 8, and in the instances where the legislature in pursuance of section 9 may have delegated the conduct of the Government to the Council of State.

(2) All Bills and important Government measures shall be discussed in the Council of State.

**18. Council of Ministers**

If the King should be prevented from holding a Council of State he may entrust the discussion of a matter to a Council of Ministers. Such Council of Ministers shall consist of all the Ministers, and it shall be presided over by the Prime Minister. The vote of each Minister shall be entered in a minute book, and any question shall be decided by a majority of votes. The Prime Minister shall submit the Minutes, signed by the Ministers present, to the King, who shall decide whether he will immediately consent to the recommendations of the Council of Ministers, or have the matter brought before him in a Council of State.

**19. Foreign Affairs**

(1) The King shall act on behalf of the Realm in international affairs Provided that without the consent of the Parliament the King shall not undertake any act whereby the territory of the Realm will be increased or decreased, nor shall he enter into any obligation which for fulfillment requires the concurrence of the Parliament, or which otherwise is of major importance, nor shall the King, except with the consent of the Parliament, terminate any international treaty entered into with the consent of the Parliament

(2) Except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign State without the consent of the Parliament Any measure which the King may take in pursuance of this provision shall immediately be submitted to the Parliament If the Parliament is not in session it shall be convoked immediately

(3) The Parliament shall appoint from among its members a Foreign Affairs Committee, which the Government shall consult prior to the making of any decision of major importance to foreign policy Rules applying to the Foreign Affairs Committee shall be laid down by Statute

**20. Delegation of Powers**

(1) Powers vested in the authorities of the Realm under this Constitution Act may, to such extent as shall be provided by Statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation

(2) For the passing of a Bill dealing with the above a majority of five-sixths of the members of the Parliament shall be required If this majority is not obtained, whereas the majority required for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the Electorate for approval or rejection in accordance with the rules for Referenda laid down in section 42

**21. Introduction of Bills**

The King may cause Bills and other measures to be introduced in the Parliament

**22. Royal Assent**

A Bill passed by the Parliament shall become law if it receives the Royal Assent not later than thirty days after it was finally passed The King shall order the promulgation of Statutes and shall see to it that they are carried into effect

**23. Provisional Laws**

In an emergency the King may when the Parliament cannot assemble, issue provisional laws, provided that they shall not be at variance with the Constitution Act, and that they shall always immediately on the assembling of the Parliament be submitted to it for approval or rejection

**24. Prerogative of Mercy and Amnesty**

The King shall have the prerogative of mercy and of granting amnesty. The King may grant Ministers a pardon for sentences passed upon them by the High Court of the Realm only with the consent of the Parliament.

**25. Grants**

The King may either directly or through the relevant Government authorities make such grants and grant such exemptions from the Statutes as are either warranted under the rules existing before the 5th June, 1849, or have been warranted by a Statute passed since that date.

**26. Coinage**

The King may cause money to be coined as provided by Statute.

**27. Appointment of Civil Servants**

(1) Rules governing the appointment of civil servants shall be laid down by Statute. No person shall be appointed a civil servant unless he is a Danish subject. Civil servants who are appointed by the King shall make a solemn declaration to the effect that they will adhere to the Constitution Act.

(2) Rules governing the dismissal, transfer, and pensioning of civil servants shall be laid down by Statute, *confer section 64*.

(3) Civil servants appointed by the King shall only be transferred without their consent if they do not suffer any loss in the income accruing from their posts or offices, and if they have been offered the choice of such transfer or retirement on pension under the general rules and regulations.

**PART IV****THE PARLIAMENT****28. Membership**

The Parliament shall consist of one Assembly of not more than one hundred and seventy-nine members, of whom two members shall be elected on the Faeroe Islands and two members in Greenland.

**29. Right to Vote**

(1) Any Danish subject whose permanent residence is in the Realm, and who has the age qualification for suffrage provided for in sub-section (2) shall have the right to vote at Parliament elections, provided that he has not been declared incapable of conducting his own affairs. It shall be laid down by Statute to what extent conviction and public assistance amounting to poor relief within the meaning of the law shall entail disfranchisement.

(2) The age qualification for suffrage shall be such as has resulted from the Referendum held under the Act dated the 25th March, 1953. Such age qualification for suffrage may be altered at any time by Statute. A Bill passed by the Parliament for the purpose of such enactment shall receive the Royal Assent only when the provision on the alteration in the age qualification for

suffrage has been put to a Referendum in accordance with section 42 (5), which was not resulted in the rejection of the provision

### **30. Eligibility for Membership**

(1) Any person who has a right to vote at Parliament elections shall be eligible for membership of the Parliament, unless he has been convicted of an act which in the eyes of the public makes him unworthy of being a member of the Parliament

(2) Civil servants who are elected members of the Parliament shall not require permission from the Government to accept their election

### **31. Elections**

(1) The members of the Parliament shall be elected by general and direct ballot

(2) Rules for the exercise of the suffrage shall be laid down by the Elections Act, which, to secure equal representation of the various opinions of the Electorate, shall prescribe the manner of election and decide whether proportional representation shall be adopted with or without elections in single-member constituencies

(3) In determining the number of seats to be allotted to each area regard shall be paid to the number of inhabitants, the number of electors, and the density of population

(4) The Elections Act shall provide rules governing the election of substitutes and their admission to the Parliament, and also rules for the procedure to be adopted where a new election is required

(5) Special rules for the representation of Greenland in the Parliament may be laid down by Statute

### **32. Period**

(1) The members of the Parliament shall be elected for a period of four years

(2) The King may at any time issue writs for a new election with the effect that the existing seats be vacated upon a new election. Provided that writs for an election shall not be issued after the appointment of a new Ministry until the Prime Minister has presented himself to the Parliament

(3) The Prime Minister shall cause a general election to be held before the expiration of the period for which the Parliament has been elected

(4) No seats shall be vacated until a new election has been held

(5) Special rules may be provided by Statute for the commencement and determination of Faeroe Islands and Greenland representation in the Parliament

(6) If a member of the Parliament becomes ineligible his seating the Parliament shall become vacant

(7) On approval of his election each new member shall make a solemn declaration that he will adhere to the Constitution Act

**33. Validity of Election**

The Parliament itself shall determine the validity of the election of any member and decide whether a member has lost his eligibility or not

**34. Inviolability**

The Parliament shall be inviolable Any person who attacks its security or freedom, or any person who issues or obeys any command aiming thereat shall be deemed guilty of high treason

**PART V****PROCEDURES OF THE PARLIAMENT****35. Constitutional Session**

(1) A newly elected Parliament shall assemble at twelve o'clock noon on the twelfth week-day after the day of election, unless the King has previously convoked a meeting of its members

(2) Immediately after the proving of the mandates the Parliament shall constitute itself by the election of a President and Vice-Presidents

**36. Sessional Year**

(1) The sessional year of the Parliament shall commence on the first Tuesday of October, and shall continue until the first Tuesday of October of the following year

(2) On the first day of the sessional year at twelve o'clock noon the members shall assemble for a new session of the Parliament

**37. Location**

The Parliament shall meet in the place where the Government has its seat Provided that in extraordinary circumstances the Parliament may assemble elsewhere in the Realm

**38. Account of the General State of the Country**

(1) At the first meeting in the sessional year the Prime Minister shall render an account of the general state of the country and of the measures proposed by the Government

(2) Such account shall be made the subject of a general debate

**39. Meetings**

The President of the Parliament shall convene the meetings of the Parliament, stating the Order of the Day The President shall convene a meeting of the Parliament upon a requisition being made in writing by at least two-fifths of the members of the Parliament or the Prime Minister, stating the Order of the Day

**40. Privileges of Ministers**

The Ministers shall *ex-officio* be entitled to attend the sittings of the Parliament and to address the Parliament during the debates as often as they

may desire, provided that they abide by the Rules of Procedure of the Parliament They shall be entitled to vote only when they are members of the Parliament

#### 41 Bills

(1) Any member of the Parliament shall be entitled to introduce Bills and other measures

(2) No Bill shall be finally passed until it has been read three times in the Parliament

(3) Two-fifths of the members of the Parliament may request of the President that the third reading of a Bill shall not take place until twelve week-days after its passing the second reading The request shall be made in writing and signed by the members making it Provided that there shall be no such postponement in connection with Finance Bills, Supplementary Appropriation Bills, Provisional Appropriation Bills, Government Loan Bills, Naturalization Bills, Expropriation Bills, Indirect Taxation Bills, and, in emergencies, Bills the enactment of which cannot be postponed owing to the intent of the Act

(4) In the case of a new election and at the end of the sessional year all Bills and other measures which have not been finally passed, shall be dropped

#### 42. Referendum

(1) Where a Bill has been passed by the Parliament, one-third of the members of the Parliament may within three week-days from the final passing of the Bill request of the President that the Bill be subjected to a Referendum Such request shall be made in writing and signed by the members making the request

(2) Except in the instance mentioned in sub-section (7), no Bill which may be subjected to a Referendum, confer sub-section (6), shall receive the Royal Assent before the expiration of the time limit mentioned in sub-section (1), or before a Referendum requested as aforesaid has taken place

(3) Where a Referendum on a Bill has been requested the Parliament may within a period of five week-days from the final passing of the Bill resolve that the Bill shall be withdrawn

(4) Where the Parliament has made no resolution in accordance with sub-section (3), notice to the effect that the Bill will be put to a Referendum shall without delay be given to the Prime Minister, who shall then cause the Bill to be published together with a statement that a Referendum will be held The Referendum shall be held in accordance with the decision of the Prime Minister not less than twelve and not more than eighteen week-days after the publication of the Bill

(5) At the Referendum votes shall be cast for or against the Bill For the Bill to be rejected a majority of the electors taking part in the voting, however, not less than thirty per cent of all persons entitled to vote, shall have voted against the Bill

(6) Finance Bills, Supplementary Appropriation Bills, Provisional Appropriation Bills, Government Loan Bills, Civil Servants (Amendment) Bills, Salaries and Pensions Bills, Naturalization Bills, Expropriation Bills, Taxation (Direct and Indirect) Bills, as well as Bills introduced for the purpose of discharging existing treaty obligations shall not be subject to a decision by Referendum. This provision shall also apply to the Bills referred to in sections 8, 9, 10, and 11, and to such resolutions as are provided for in section 19, if existing in the form of a law, unless it has been provided by a special Act that such resolutions shall be put to a Referendum. Amendments of the Constitution Act shall be governed by the rules laid down in section 88.

(7) In an emergency a Bill that may be subjected to a Referendum may receive the Royal Assent immediately after it has been passed, provided that the Bill contains a provision to that effect. Where under the rules of subsection (1) one-third of the Members of the Parliament request a Referendum on the Bill or on the Act to which the Royal Assent has been given, such Referendum shall be held in accordance with the above rules. Where the act is rejected by the Referendum, an announcement to that effect shall be made by the Prime Minister without undue delay and not later than fourteen days after the Referendum was held. From the date of such announcement the Act shall become ineffective.

(8) Rules for Referenda, including the extent to which Referenda shall be held on the Faeroe Islands and in Greenland, shall be laid down by Statute.

#### 43. Taxes

No taxes shall be imposed, altered, or repealed except by Statute, nor shall any man be conscripted or any public loan be raised except by Statute.

#### 44. Naturalization

(1) No alien shall be naturalized except by Statute.

(2) The extent of the right of aliens to become owners of real property shall be laid down by Statute.

#### 45. Finance Bill

(1) A Finance Bill for the next financial year shall be laid before the Parliament not later than four months before the beginning of such financial year.

(2) Where it is expected that the reading of the Finance Bill for the next financial year will not be completed before the commencement of that financial year, a Provisional Appropriation Bill shall be laid before the Parliament.

#### 46. Finance Act

(1) Taxes shall not be levied before the Finance Act or a Provisional Appropriation Act has been passed by the Parliament.

(2) No expenditure shall be defrayed unless provided for by the Finance act passed by the Parliament, or by a Supplementary Appropriation Act, or by a Provisional Appropriation Act passed by the Parliament.

**47. Auditing of Public Accounts**

(1) The Public Accounts shall be submitted to the Parliament not later than six months after the expiration of the financial year

(2) The Parliament shall elect a number of Auditors. Such Auditors shall examine the annual Public Accounts and see that all the revenues of the State have been duly entered therein, and that no expenditure has been defrayed unless provided for by the Finance Act or some other Appropriation Act. The Auditors shall be entitled to demand all necessary information, and shall have a right of access to all necessary documents. Rules providing for the number of Auditors and their duties shall be laid down by Statute.

(3) The Public Accounts together with the Auditors' Report shall be submitted to the Parliament for its decision.

**48. Rules of Procedure**

The Parliament shall lay down its own Rules of Procedure, including rules governing its conduct of business and the maintenance of order.

**49. Publicity**

The sittings of the Parliament shall be public. Provided that the President, or such number of members as may be provided for by the Rules of Procedure, or a Minister shall be entitled to demand the removal of all unauthorized persons, whereupon it shall be decided without a debate whether the matter shall be debated at a public or a secret sitting.

**50. Participation**

In order to make a decision more than one-half of the members of the Parliament shall be present and take part in the voting.

**51. Committees**

The Parliament may appoint committees from among its members to investigate matters of general importance. Such committees shall be entitled to demand written or oral information both from private citizens and from public authorities.

**52. Proportional Representation in Committees**

The election by the Parliament of members to sit on committees and of members to perform special duties shall be according to proportional representation.

**53. Discussion**

With the consent of the Parliament any member thereof may submit for discussion any matter of public interest and request a statement thereon from the Ministers.

**54. Petitions**

Petitions may be submitted to the Parliament only through one of its members.

**55. Control of Civil and Military Administration**

By statute shall be provided for the appointment by the Parliament of one or two persons, who shall not be members of the Parliament, to control the civil and military administration of the State

**56. Freedom of Members**

The members of the Parliament shall be bound solely by their own conscience and not by any directions given by their electors

**57. Immunity of Members**

No member of the Parliament shall be prosecuted or imprisoned in any manner whatsoever without the consent of the Parliament, unless he is caught in *flagrante delicto*. Outside the Parliament no member shall be held liable for his utterance in the Parliament save by the consent of the Parliament

**58. Remuneration**

The members of the Parliament shall be paid such remuneration as may be provided for in the Elections Act

**PART VI****THE HIGH COURT****59. Membership**

(1) The High Court of the Realm shall consist of up to fifteen of the eldest — according to seniority of office — ordinary members of the highest court of justice of the Realm, and an equal number of members elected for six years by the Parliament according to proportional representation. One or more substitutes shall be elected for each elected member. No member of the Parliament shall be elected a member of the High Court of the Realm, nor shall a member of the Parliament act as a member of the High Court of the Realm. Where in a particular instance some of the members of the highest court of justice of the Realm are prevented from taking part in the trial of a case, an equal number of the members of the High Court of the Realm last elected by the Parliament shall retire from their seats

(2) The High Court of the Realm shall elect a President from among its members

(3) Where a case has been brought before the High Court of the Realm, the members elected by the Parliament shall retain their seats in the High Court of the Realm for the duration of such case, even if the period for which they were elected has expired

(4) Rules for the High court of the Realm shall be provided by Statute

**60. Actions**

(1) The High Court of the Realm shall try such actions as may be brought by the King or the Parliament against Ministers

(2) With the consent of the Parliament the King may cause to be tried

before the High Court of the Realm also other persons for crimes which he may deem to be particularly dangerous to the State

#### **61. Exercise of Judiciary Power**

The exercise of the judiciary power shall be governed only by Statute Extraordinary courts of justice with judicial power shall not be established

#### **62. Separation of Powers**

The administration of justice shall always remain independent of the executive power Rules to this effect shall be laid down by Statute

#### **63. Control of Executive Power**

(1) The courts of justice shall be entitled to decide any question bearing upon the scope of the authority of the executive power However, a person who wants to query such authority shall not, by bringing the case before the courts of justice, avoid temporary compliance with orders given by the executive power

(2) Questions bearing upon the scope of the authority of the executive power may be referred by Statute for decision to one or more administrative courts Provided that an appeal from the decision of the administrative courts shall lie to the highest court of the Realm Rules governing this procedure shall be laid down by Statute

#### **64. Independence of Judges**

In the performance of their duties the Judges shall be directed solely by the law Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in the instances where a rearrangement of the courts of justice is made However, a Judge who has completed his sixty-fifth year may be retired, but without loss of income up to the time when he is due for retirement on account of age

#### **65. Publicity**

(1) In the administration of justice all proceedings shall be public and oral to the widest possible extent

(2) Laymen shall take part in criminal procedure The cases and the form in which such participation shall take place, including what cases are to be tried by jury, shall be provided for by Statute

### **PART VII**

### **STATE CHURCH**

#### **66. Church Constitution**

The constitution of the Established Church shall be laid down by Statute

#### **67. Right to Worship**

The citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done

**68. Church Contributions**

No one shall be liable to make personal contributions to any denomination other than the one to which he adheres.

**69. Regulation of Other Religious Bodies**

Rules for religious bodies dissenting from the Established Church shall be laid down by Statute.

**70. Freedom of Religion**

No person shall for reasons of his creed or descent be deprived of access to complete enjoyment of his civic and political rights, nor shall he for such reasons evade compliance with any common civic duty.

## **PART VIII**

### **INDIVIDUAL RIGHTS**

**71. Personal Liberty**

(1) Personal liberty shall be inviolable. No Danish subject shall in any manner whatever be deprived of his liberty because of his political or religious convictions or because of his descent

(2) A person shall be deprived of his liberty only where this is warranted by law.

(3) Any person who is taken into custody shall be brought before a Judge within twenty-four hours. Where the person taken into custody cannot be released immediately, the Judge shall decide, stating the grounds in an order to be given as soon as possible and at the latest within three days, whether the person taken into custody shall be committed to prison, and in cases where he can be released on bail, the Judge shall determine the nature and amount of such bail. This provision may be departed from by Statute as far as Greenland is concerned, if for local considerations such departure may be deemed necessary.

(4) The finding given by the Judge may at once be separately appealed against by the person concerned to a higher court of justice.

(5) No person shall be remanded for an offence that can involve only punishment consisting of a fine or mitigated imprisonment.

(6) Outside criminal procedure the legality of deprivation of liberty which is not by order of a judicial authority, and which is not warranted by the legislation dealing with aliens, shall at the request of the person who has been deprived of his liberty, or at the request of any person acting on his behalf, be brought before the ordinary courts of justice or other judicial authority for decision. Rules governing this procedure shall be provided by Statute.

(7) The persons mentioned in sub-section (6) shall be under supervision by a board set up by the Parliament, to which board the persons concerned shall be permitted to apply.

**72 Inviolability of the House**

The dwelling shall be inviolable. House searching, seizure, and examination of letters and other papers as well as any breach of the secrecy to be observed in postal, telegraph, and telephone matters shall take place only under a judicial order unless particular exception is warranted by Statute.

**73. Right to Property, Expropriation**

(1) The right of property shall be inviolable. No person shall be ordered to cede his property except where required by the public weal. It can be done only as provided by Statute and against full compensation.

(2) Where a Bill relating to the expropriation of property has been passed, one-third of the members of the Parliament may within three weeks from the final passing of such Bill demand that it shall not be presented for the Royal Assent until new elections to the Parliament have been held and the Bill has again been passed by the Parliament assembling thereupon.

(3) Any question of the legality of an act of expropriation and the amount of compensation may be brought before the courts of justice. The hearing of issues relating to the amount of the compensation may by Statute be referred to courts of justice established for such purpose.

**74. Free and Equal Access to Trade**

Any restraint of the free and equal access to trade which is not based on the public weal, shall be abolished by Statute.

**75 Right to Work**

(1) In order to advance the public weal efforts should be made to afford work to every able-bodied citizen on terms that will secure his existence.

(2) Any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect.

**76 Compulsory Schooling**

All children of school age shall be entitled to free instruction in the elementary schools. Parents or guardians who themselves arrange for their children or wards receiving instruction equal to the general elementary school standard, shall not be obliged to have their children or wards taught in elementary school.

**77 Freedom of Speech**

Any person shall be entitled to publish his thoughts in printing, in writing, and in speech, provided that he may be held answerable in a court of justice. Censorship and other preventive measures shall never again be introduced.

**78. Freedom of Association**

(1) The citizens shall be entitled without previous permission to form associations for any lawful purpose.

(2) Associations employing violence, or aiming at attaining their object by violence, by instigation to violence, or by similar punishable influence on people of other views, shall be dissolved by judgment

(3) No association shall be dissolved by any Government measure. However, an association may be temporarily prohibited, provided that proceedings be immediately taken against it for its dissolution

(4) Cases relating to the dissolution of political associations may without special permission be brought before the highest court of justice of the Realm

(5) The legal effects of the dissolution shall be determined by Statute

#### 79. Freedom of Assembly

The citizens shall without previous permission be entitled to assemble unarmed. The police shall be entitled to be present at public meetings. Open-air meetings may be prohibited when it is feared that they may constitute a danger to the public peace

#### 80. Dissolution of Assemblies

In case of riots the armed forces, unless attacked, may take action only after the crowd in the name of the King and the law has three times been called upon to disperse, and such warning has been unheeded

#### 81. Military Duty

Every male person able to carry arms shall be liable with his person to contribute to the defence of his country under such rules as are laid down by Statute

#### 82. Local Autonomy

The right of the municipalities to manage their own affairs independently under the supervision of the State shall be laid down by Statute

#### 83. Abolishing of Privileges

All privileges by legislation attached to nobility, title, and rank shall be abolished

#### 84. Abolishing of Estate Tails

In future no fiefs, estates tail in land or estates tail in personal property shall be created

#### 85. Exemptions for Military Forces

The provisions of sections 71, 78, and 79 shall only be applicable to the defence forces subject to such limitations as are consequential to the provisions of military laws

### PART IX

## LOCAL GOVERNMENTS, ICELAND

#### 86. Local Governments

The age qualification for local Government electors and congregational council electors shall be that applying at any time to Parliament electors. With

reference to the Faeroe Islands and Greenland the age qualification for local Government electors and congregational council electors shall be such as may be provided for by Statute or fixed in accordance with Statute

### **87. Iceland**

Citizens of Iceland who enjoy equal rights with citizens of Denmark under the Danish-Icelandic Union (Abolition), etc Act, shall continue to enjoy the rights attached to Danish citizenship under the provisions of the Constitution Act

## **PART X**

### **CONSTITUTIONAL AMENDMENTS**

#### **88. Constitutional Amendments, Electors' Vote**

When the Parliament passes a Bill for the purposes of a new constitutional provision, and the Government wishes to proceed with the matter, writs shall be issued for the election of members of a new Parliament. If the Bill is passed unamended by the Parliament assembling after the election, the Bill shall within six months after its final passing be submitted to the Electors for approval or rejection by direct voting. Rules for this voting shall be laid down by Statute. If a majority of the persons taking part in the voting, and at least 40 per cent of the Electorate has voted in favor of the Bill as passed by the Parliament, and if the Bill receives the Royal Assent it shall form an integral part of the Constitution Act.

## **PART XI**

### **ENACTING THE CONSTITUTION**

#### **89 Abolishment of the Rigsdag**

This Constitution Act shall come into operation at once. Provided that the Rigsdag last elected under the Constitution of the Kingdom of Denmark Act, 5th June, 1915, as amended on the 10th September, 1920, shall continue to exist until a general election has been held in accordance with the rules laid down in Part IV. Until a general election has been held the provisions laid down for the Rigsdag in the Constitution of the Kingdom of Denmark Act, 5th June, 1915, as amended on the 10th September, 1920, shall remain in force.

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# 12

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## CONSTITUTION OF ARAB REPUBLIC OF EGYPT

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### THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT

*After the Amendments Ratified*

*on May 22, 1980 Referendum*

### CONSTITUTIONAL PROCLAMATION

We, the people of Egypt, who have been toiling on this great land since the dawn of history and the beginning of civilisation

We, the people working in Egypt's villages, cities, plants, centres of education, industry and in any field of work which contributes to create life on its soil or which plays a part in the honour of defending this land, We, the people who believe in our immortal and spiritual heritage, and who are confident in our profound faith, and cherish the honour of man and of humanity, We, the people, who in addition to shouldering the trust of history, carry the responsibility of great present and future objectives whose seeds are embedded in the long and arduous struggle, and which hosted the flags of freedom, socialism and unity along the path of the great march of the Arab nation, We, the Egyptian people, in the name of God and by His assistance, pledge indefinitely and unconditionally to exert every effort to realise

#### FIRST

Peace to our world being determined that peace should be based on justice, and that the political and social progress of all peoples can only be realised through the freedom of these peoples and their independent will, and that any civilisation is not worthy of its name unless it is free from exploitation whatever its form.

**SECOND**

Union the hope of our Arab Nation, being convinced that Arab Unity is a call of history and of the future, and a demand of destiny, and that it cannot materialise except through an Arab Nation, capable of warding off any threat, whatever the source or the pretexts for such a threat

**THIRD**

The constant development of life in our nation Being convinced that the true challenge confronting nations is the realization of progress and that such progress does not occur automatically, or through slogans, but that the driving force behind it is the release of the potentials of creativity and inspiration in our people, who have asserted at all times their contribution to civilization and to humanity through work alone

Our people have passed through successive experiences, meantime offering rich experiences on the national and international level and being guided by them, which ultimately took shape in the July 23 Revolution of 1952

This Revolution was brought about by the alliance of the working forces of our militant people who were able, through profound and refined consciousness, to retain their original character, but at the same time move forward in a bid to realise full integration between science and faith, between political and social freedom, between national independence and social affiliation, and to participate in the worldwide struggle for the liberation of man, on the political, economic, cultural and ideological levels, and in the struggle against the forces of regression, domination and exploitation

**FOURTH**

Freedom for the humanity of the Egyptian man Realising that man's humanity and dignity are the lights which guide and direct the course of the great development of mankind for the realisation of its supreme ideal

Man's dignity is a natural reflection of the nation's dignity, now that the individual is the cornerstone in the edifice of the homeland, the land that derives its strength and prestige from the value of man and his education

The sovereignty of law is not only a guarantee for the freedom of the individual alone, but is also at the same time the sole basis for the legality of authority

The alliance of the active popular powers is not a means for social strife leading towards historical development

In this modern age, it is a safety valve, protecting the unity of working powers in the country and eliminating, through democracy, and contradictions

We, the people of Egypt, out of determination, confidence and faith in all national and international responsibilities, and in acknowledgment of God's right and His Heavenly Messages, and in the right of the country and nation, as well as of the principle and responsibility of mankind, and in the name of the Almighty and His assistance, declare on the 11th of September, 1971 that

we accept, and grant, to ourselves this Constitution, affirming our determination to defend and protect it, and asserting our respect for it in letter and spirit

## PART ONE

### THE STATE

1. The Arab Republic of Egypt is a democratic, socialist State based on the alliance of the working forces of the people

The Egyptian people are part of the Arab Nation and work for the realisation of its comprehensive unity

2. Islam is the religion of the State and Arabic its official language

Islamic jurisprudence is the principal source of legislation

3. Sovereignty is for the people alone they are the source of authority

The people shall exercise and protect this sovereignty, and safeguard national unity in the manner specified in the Constitution

4. The economic foundation of the Arab Republic of Egypt is a socialist democratic system based on sufficiency and justice in a manner preventing exploitation, conducive to liquidation of income differences, protecting legitimate earnings, and guaranteeing the equity of the distribution of public duties and responsibilities

5. The political system of the Arab Republic of Egypt is a multiparty one, within the framework of the basic elements and principles of the Egyptian society as stipulated in the Constitution (Political parties are regulated by law)

6. The Egyptian nationality is defined by the law

## PART TWO

### BASIC CONSTITUENTS OF THE SOCIETY

#### CHAPTER 1

#### SOCIAL AND MORAL CONSTITUENTS

7. Social solidarity is the basis of the society

8. The State shall guarantee equality of opportunity to all citizens

9. The family is the basis of the society founded on religion, morality and patriotism

The State is keen to preserve the genuine character of the Egyptian family—with what it embodies of values and traditions—while affirming and developing this character in the relations within the Egyptian society

10. The State shall guarantee the protection of motherhood and childhood, take care of children and youth and provide the suitable conditions for the development of their talents

11. The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering

her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence

12. The society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, historical heritage of the people, scientific facts, socialist conduct and public morality within the limits of the law

The State is committed to abiding by these principles and promoting them

13. Work is right, a duty and an honour ensured by the State

Workers who excel in their field of work shall receive the appreciation of the State and the society

No work shall be imposed on the citizens, except by virtue of the law, for the performance of a public service and in return for a fair remuneration

14. Public offices are the right of all citizens and an assignment for their occupants in the service of the people

The State guarantees their (the occupants) protection and the performance of their duties in safeguarding the interests of the people

They may not be dismissed by other than the disciplinary way, except in the cases specified by the law

15. The war veterans, those injured in war or because of it, and the wives and children of those killed shall have priority in work opportunities according to the law

16. The State shall guarantee cultural, social and health services, and work to ensure them for the villages in particular in an easy and regular manner in order to raise their standard

17. The State shall guarantee social and health insurance services and all the citizens have the right to pensions in cases of incapacity, unemployment and old-age, in accordance with the law

18. Education is a right guaranteed by the State

It is obligatory in the primary stage and the State shall work to extend obligation to other stages

The State shall supervise all branches of education and guarantee the independence of universities and scientific research centres, with a view to linking all this with the requirements of society and production

19. Religious education shall be a principal subject in the courses of general education

20. Education in the State educational institutions shall be free of charge in its various stages

21. Combating illiteracy shall be a national duty for which all the people's energies should be mobilized

22. The institution of civil titles shall be prohibited

## CHAPTER II

## ECONOMIC CONSTITUENTS

23. The national economy shall be organised in accordance with a comprehensive development plan which ensures raising the national income, fair distribution, raising the standard of living, eliminating unemployment, increasing work opportunities, connecting wages with production, fixing a minimum and a maximum limit for wages in a manner which guarantees lessening the disparities between incomes

24. The people shall control all the means of production and direct their surplus in accordance with the development plan laid down by the State.

25. Every citizen shall have a share in the national revenue to be defined by the law in accordance with his work or his unexploiting ownership

26. The workers shall have a share in the management and profits of the projects. They are committed to the development of production and the implementation of the plan in their production units, in accordance with the law. Protecting the means of production is a national duty.

Workers shall be represented on the boards of directors of the public sector units by at least 50% of the number of members of these boards. The law shall guarantee for the small farmers and small craftsmen 80% of the membership on the boards of directors of the agricultural cooperatives and industrial cooperatives

27. Beneficiaries shall participate in the management of the services projects of public interest and their supervision in accordance with the law

28. The State shall look after the cooperative establishments in all their forms and encourage handicrafts with a view to developing production and raising income.

The State shall endeavour to consolidate the agricultural cooperatives according to modern scientific bases.

29. Ownership shall be under the supervision of the people and the protection of the State

There are three kinds: public ownership, cooperative ownership and private ownership

30. Public ownership is the ownership of the people and it is confirmed by the continuous consolidation of the public sector.

The Public sector shall be the vanguard of progress in all spheres and shall assume the main responsibility in the development plan

31. Cooperative ownership is the ownership of the cooperative societies. The law guarantees its protection and self-management

32. Private ownership shall be represented by the unexploiting capital. The law organises the performance of its social function in the service of national economy within the framework of the development plan without deviation or exploitation. It may not be in conflict, in the ways of its use, with the general welfare of the people.

33. Public ownership shall have its sanctity, and its protection and consolidation is the duty of every citizen in accordance with the law, as it is considered the mainstay of the strength of the homeland, a basis for the socialist system and a source of prosperity of the people

34. Private ownership shall be safeguarded and may not be put under sequestration except in the cases specified in the law and with a judicial decision. It may not be expropriated except for the general good and against a fair compensation in accordance with the law. The right of inheritance is guaranteed in it.

35. Nationalisation shall not be allowed except for considerations of public interest, in accordance with a law and against a compensation.

36. General sequestration of funds shall be prohibited.

Private sequestration shall not be allowed except with a judicial decision.

37. The law shall fix the maximum limit of land ownership with a view to protecting the farmer and the agricultural labourer from exploitation and asserting the authority of the alliance of the people's working powers at the level of the village.

38. The tax system shall be based on social justice.

39. Saving is a national duty protected, encouraged and organised by the State.

### **PART THREE**

#### **PUBLIC FREEDOMS, RIGHTS AND DUTIES**

40. All citizens are equal before the law.

They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed.

41. Individual freedom is a natural right and shall not be touched.

Except in cases of a flagrant delict no person may be arrested, inspected, detained or his freedom restricted or prevented from free movement except by an order necessitated by investigations and preservation of the security of the society.

This order shall be given by the competent Judge or the Public Prosecution in accordance with the provisions of the law.

The law shall determine the period of custody.

42. Any person arrested, detained or his freedom restricted shall be treated in the manner concomitant with the preservation of his dignity.

No physical or moral harm is to be inflicted upon him.

He may not be detained or imprisoned except in places defined by laws organising prisons.

If a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile.

43. Any medical or scientific experiment may not be undergone on any person without his free consent

44. Homes shall have their sanctity and they may not be entered or inspected except by a causal judicial warrant prescribed by the law.

45. The law shall protect the inviolability of the private life of citizens.

Correspondence, wires, telephone calls and other means of communication shall have their own sanctity and secrecy and may not be confiscated or monitored except by a causal judicial warrant and for a definite period according to the provisions of the law

46. The State shall guarantee the freedom of belief and the freedom of practice of religious rites

47. Freedom of opinion is guaranteed.

Every individual has the right to express his opinion and to publicise it verbally or in writing or by photography or by other means within the limits of the law

Self-criticism and constructive criticism is the guarantee for the safety of the national structure.

48. Freedom of the press, printing, publication and mass media shall be guaranteed

Censorship on newspapers is forbidden as well as notifying, suspending or cancelling them by administrative methods

In a state of emergency or in time of war a limited censorship may be imposed on the newspapers, publications and mass media in matters related to public safety or purposes of national security in accordance with the law.

49. The State shall guarantee the freedom of scientific research and literary, artistic and cultural invention and provide the necessary means for its realisation

50. No citizen may be prohibited from residing in any place and no citizen may be forced to reside in a particular place, except in the cases defined by the law

51. No citizen may be deported from the country or prevented from returning to it

52. Citizens shall have the right to permanent or temporary immigration.

The law shall regulate this right and the measures and conditions of immigration and leaving the country

53. The right to political asylum shall be guaranteed by the State for every foreigner persecuted for defending the peoples' interests, human rights, peace or justice

The extradition of political refugees is prohibited

54. Citizens shall have the right to peaceable and unarmed private assembly without the need for prior notice

Security men should not attend these private meetings

Public meetings, processions and gatherings are allowed within the limits of the law

55. Citizens shall have the right to form societies as defined in the law

The establishment of societies whose activities are hostile to the social system, clandestine or have a military character is prohibited

56. The creation of syndicates and unions on a democratic basis is a right guaranteed by law, and should have a moral entity

The law regulates the participation of syndicates and unions in carrying out the social programmes and plans, raising the standard of efficiency, consolidating the socialist behavior among their members, and safeguarding their funds

They are responsible for questioning their members about their behavior in exercising their activities according to certain codes of morals, and for defending the rights and liberties of their members as defined in the law

57. Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription

The State shall grant a fair compensation to the victim of such an assault

58. The defense of the motherland is a sacred duty, and conscription is obligatory in accordance with the law

59. Safeguarding, consolidating and preserving the socialist gains is a national duty

60. Protecting national unity and keeping State secrets is the duty of every citizen

61. Payment of taxes and public imports is a duty, in accordance with the law

62. Citizens shall have the right to vote, nominate and express their opinions in referendums according to the provisions of the law

Their participation in public life is a national duty

63. Every individual has the right to address public authorities in writing and with his own signature

Addressing public authorities should not be in the name of groups, with the exception of disciplinary organs and moral personalities

## *PART FOUR*

### **SOVEREIGNTY OF THE LAW**

64. Sovereignty of the law shall be the basis of rule in the State

65. The State shall be subject to law

The independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties

66. Penalty shall be personal

There shall be no crime or penalty except by virtue of the law

No penalty shall be inflicted except by a judicial sentence

Penalty shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them

67. Any defendant is innocent until he is proved guilty before a legal court, in which he is granted the right to defend himself

Every person accused of a crime must be provided with counsel for his defense

68. The right to litigation is inalienable for all, and every citizen has the right to refer to his competent judge

The State shall guarantee the accessibility of the judicature organs to litigants, and the rapidity of statuting on cases

Any provision in the law stipulating the immunity of any act or administrative decision from the control of the judicature is prohibited

69. The right of defense in person or by mandate is guaranteed

The law shall grant the financially incapable citizens the means to resort to justice and defend their rights

70. No penal lawsuit shall be sued except by an order from a judicature organ and in cases defined by the law

71. Any person arrested or detained should be informed, forthwith with the reasons for his arrest or detention

He has the right to communicate, inform, and ask the help of anyone as prescribed in the law

He must be faced, as soon as possible, with the charges directed against him

Any person may lodge a complaint to the courts against any measure taken to restrict his individual freedom.

The law regulates the right of complaint in a manner ensuring a ruling regarding it within a definite period, or else release is imperative

72. Sentences shall be passed and executed in the name of the people.

Likewise, refraining to execute sentences or obstructing them on the part of the concerned civil servants is considered a crime punishable by law

In this case, those whom the sentence is in favour of, have the right to sue a direct penal lawsuit before the competent court

## **PART FIVE**

### **SYSTEM OF GOVERNMENT**

#### **CHAPTER ONE**

#### **THE HEAD OF STATE**

73. The Head of State is the President of the Republic

He shall assert the sovereignty of the people, respect the Constitution and the supremacy of the law, safeguard the national unity and the socialist

gains, and maintain the boundaries between authorities in a manner to ensure that each shall perform its role in the national action

74. If any danger threatens the national unity or the safety of the motherland or obstructs the constitutional role of the State institutions, the President of the Republic shall take urgent measures to face this danger, direct a statement to the people and conduct a referendum on these measures within sixty days of its adoption

73. The person to be elected President of the Republic must be an Egyptian born to Egyptian parents and enjoy civil and political rights

His age must not be less than 40 Gregorian years

76. The People's Assembly shall nominate the President of the Republic

The nomination shall be referred to the people for a plebiscite

The nomination to the post of President of the Republic shall be made in the People's Assembly upon the proposal of at least one-third of its member

The candidate who wins two-thirds of the votes of the Assembly members shall be referred to the people for a plebiscite

If none of the candidates obtain the said majority the nomination process shall be repeated two days after the first vote

The candidate winning the votes with an absolute majority of the Assembly members shall be referred to the citizens for a plebiscite

The candidate shall be considered President of the Republic when he obtains an absolute majority of the votes cast in the plebiscite

If the candidate does not obtain this majority, the Assembly shall nominate another candidate and the same procedure shall be followed

77. The term of the Presidency is six Gregorian years starting from the date of the announcement of the result of the plebiscite

The President of the Republic may be re-elected for other successive terms

78. Procedures for the choice of a new President of the Republic shall begin sixty days before the expiration of the term of the President in office

The new President shall be selected at least one week before the expiration of the term. Should this term expire without the choice of the new President being made for any reason whatsoever, the former President shall continue to exercise his functions until his successor is elected

79. Before exercising his powers, the President shall take the following oath before the People's Assembly

"I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully and to safeguard the independence and territorial integrity of the motherland"

80. The salary of the President of the Republic shall be fixed by law

Any amendment in the salary shall not come into force during the Presidential term in which it is decided upon

The President of the Republic may not receive any other salary or remuneration

81. During his term the President of the Republic may not exercise any free profession or undertake any commercial, financial or industrial activity

Nor may he acquire or take on lease any State property, sell to or exchange with the State any property of his whatsoever

82. If on account of any temporary obstacle the President of the Republic is unable to carry out his functions, he shall delegate his powers to a Vice-President

83. In case of resignation, the President shall address the letter of resignation to the People's Assembly

84. In case of the vacancy of the Presidential Office or the permanent disability of the President of the Republic, the President of the People's Assembly shall temporarily assume the Presidency, and, if at that time, the People's Assembly is dissolved, the President of the Supreme Constitutional Court shall take over the Presidency, however, on condition that neither one shall nominate himself for the Presidency

The People's Assembly shall then proclaim the vacancy of the office of President

The President of the Republic shall be chosen within a maximum period of sixty days from the day of the vacancy of the Presidential Office

85. Any charge against the President of high treason or of committing a criminal act shall be made upon a proposal by at least one-third of the members of the People's Assembly

No impeachment shall be issued except upon the approval of a majority of two-thirds of the Assembly members

The President shall be suspended from the exercise of his duty as from the issuance of the impeachment

The Vice-President shall take over the Presidency temporarily until the decision concerning the impeachment is taken

The President of the Republic shall be tried by a special tribunal set up by law

The law shall also organise the trial procedures and define the penalty

If he is found guilty, he shall be relieved of his post, without prejudice to other penalties

## CHAPTER II

### THE LEGISLATURE

#### The People's Assembly

86. The People's Assembly shall exercise the legislative power and approve the general policy of the State, the general plan of economic and social development and the general budget of the State

It shall exercise control over the work of the executive authority in the manner prescribed by the Constitution

87. The law shall determine the constituencies into which the State shall be divided and the number of elected members of the People's Assembly must be at least 350 persons, of which one half at least must be workers and farmers elected by direct secret public balloting

The definition of the worker and the farmer shall be made by law

The President of the Republic may appoint a number of members not exceeding ten

88. The necessary conditions stipulated in the members of the People's Assembly shall be defined by law

The rules of election and referendum shall be determined by law, while the ballot shall be conducted under the supervision of members of a judiciary organ

89. Employees of the State and of the public sector nominate themselves for membership in the People's Assembly

The member of the People's Assembly shall devote himself to membership in the Assembly except in cases specified by law

His post or work shall be held over for him in accordance with the provisions of the law

90. The member of the People's Assembly shall take the following oath before the Assembly before entering upon his duties

"I swear by God Almighty, that I shall preserve the safety of the nation and the Republican regime, shall attend to the interests of the people and shall respect the Constitution and law"

91. Members of the People's Assembly shall receive a remuneration determined by the law

92. The duration of the People's Assembly term is five Gregorian years from the date of its first meeting

Elections for renewal of the Assembly shall take place within the sixty days preceding the termination of the term

93. The People's Assembly shall be the only authority competent to decide upon the validity of its members

A Court of Causation shall be competent to investigate the validity of contestation presented to the Assembly, on being referred to it by the President of the Assembly

The contestation shall be referred to the Court of Causation within fifteen days as from the date on which the Assembly was informed of it, while the investigation shall be completed within ninety days from the date on which the contestation is referred to the Court of Causation

The result of the investigation and the decision reached by the Court shall be submitted to the Assembly to decide upon the validity of the contestation within sixty days from the date of submission of the result of the investigation to the Assembly

The membership will not be deemed invalid except by a decision taken by a majority of two-thirds of the Assembly members

94. If the seat of a member becomes vacant before the end of his term, a successor shall be elected or appointed to it, within sixty days from the date of the communication to the Assembly of the occurrence of the vacancy

The term of the new member shall extend until the end of the term of his predecessor.

95. No member of the People's Assembly shall, during his mandate, purchase or rent any State property, or lease or sell to the State or barter with it regarding any part of his property, or conclude a contract with the State in his capacity as entrepreneur, importer or contractor

96. No membership in the People's Assembly shall be revoked except on the grounds of loss of confidence or status or of one of the conditions of membership, or the loss of the member's status as a worker or farmer upon which he was elected or the violation of the member's mandate

The membership shall be deemed invalid on the grounds of a decision taken by a majority of two-thirds of the Assembly members

97. The People's Assembly alone may accept the resignation of its members

98. Members of the People's Assembly shall not be censured for any opinions or thoughts expressed by them in the performance of their tasks in the Assembly or its committees

99. No member of the People's Assembly shall be subject to a criminal prosecution without the permission of the Assembly except in cases of flagrant delicto

If the Assembly is not in session, the permission of the President of the Assembly must be taken

The Assembly must be notified of the measures taken in its first subsequent session

100. The seat of the People's Assembly shall be Cairo

However, in exceptional circumstances, it may meet another city, at the request of the President of the Republic or the majority of the Assembly members

Any meeting of the Assembly in other than its designated seat is illicit and the resolutions passed in it shall be considered invalid

101. The President of the Republic shall convoke the People's Assembly for its ordinary annual session before the second Thursday of November

If it is not convoked, the Assembly shall meet, by force of the Constitution, on the said day

The session of the ordinary meeting shall continue for at least seven months

102. The President of the Republic may call the People's Assembly to an extraordinary meeting, in case of necessity, or upon a request signed by a majority of the Assembly members.

The President of the Republic shall announce the dismissal of the extraordinary meeting

103. The People's assembly shall elect, in the first meeting of its ordinary annual session, a President and a Vice-President for the term of the session

If the seat of anyone of them is vacated, the Assembly shall elect a replacement, whose term will last until the end of his predecessors term

104. The People's Assembly shall lay down its own rules of procedure organising the manner of the fulfilment of its tasks

105. The People's Assembly alone shall be entitled to preserve order inside it

The President of the Assembly shall be entrusted with this task

106. The meetings of the People's Assembly shall be public

However, a meeting in camera may be held at the request of the President of the Republic or of the Government or of its Prime Minister or at least twenty of its members

The Assembly shall then decide whether the debate on the question submitted to it shall take place in a public meeting or in a meeting in camera

107 The meeting of the Assembly shall be considered invalid if the majority of its members are not present

The resolution of the Assembly shall be adopted by an absolute majority of the attending members, in cases other than those for which a specific majority is required

Every Article of the draft laws shall be put to a vote

In case of a tie vote, the question on which the debate had taken place shall be rejected

108 The president of the Republic shall have the right, in case of necessity or in exceptional cases and on the authorisation of the People's Assembly upon the approval of a majority of two-thirds of its members, to issue resolutions having the force of law

The authorisation must be for a limited period of time during which the subjects of the resolutions and the grounds upon which they are based, must be determined

The resolutions must be submitted to the People's Assembly in the first meeting after the end of the authorisation period

If they are not submitted or if they are submitted and not approved by the Assembly, they shall cease to have the force of law

109 The President of the Republic and every member of the People's Assembly shall have the right to propose laws

110. Every draft law shall be referred to a Committee of the Assembly which will study it and submit a report concerning it

Draft laws presented by members of the People's Assembly shall not be referred to this Committee unless they are first referred to a Special Committee which will study them and give an opinion on the suitability of

their consideration by the Assembly and after the Assembly decides to consider them

111. Every draft law proposed by a member and rejected by the Assembly cannot be presented again in the course of the same session.

112. The President of the Republic shall have the right to promulgate laws or object to them

113. If the President of the Republic objects to a draft law ratified by the People's Assembly he shall refer it back to the Assembly within thirty days from the Assembly's communication of it

If the draft law is not referred back within this period, it is considered a law shall be promulgated

If it is referred back to the Assembly on the said date and approved once again by a majority of two-thirds of the members, it shall be considered a law and shall be promulgated

114. The People's Assembly shall approve the general plan for economic and social development

The manner of the preparation of the plan and of its submission to the People's Assembly shall be determined by law

115. The draft general budget shall be submitted to the people's Assembly at least two months before the beginning of the fiscal year

It shall be considered in effect after approval

The draft budget shall be voted upon title by title and shall be promulgated by a law

The People's Assembly may not effect any modification in the draft budget except with the approval of the Government

In case the ratification of the new budget does not take place before the beginning of the fiscal year, the old budget shall be acted on pending such ratification

The manner of the preparation of the budget as well as the determination of the fiscal year shall be determined by law

116. The approval of the People's Assembly shall be considered necessary for the transfer of any funds one title of the budget to another title, as well as for any expenditure not included in it or excess of its estimates, and this shall be issued by a law

117. The provisions regulating the budgets and accounts of public organisations and organisms shall be prescribed by law

118. The final account of the State budget shall be submitted to the People's Assembly within a period not exceeding one year from the date of the expiration of the fiscal year

It shall be voted-upon title by title and issued by a law

The annual report of the Central Agency for Accounting and its observations must be submitted to the People's Assembly

The Assembly has the right to demand from the Central Agency for Accounting any data or other pertinent reports

119. The imposition, modification or abolition of general taxes cannot be effected except in the cases decreed by law

No one may be exempted from their payment except in the cases specified by law

No one may be asked to pay additional taxes or imposts except in the cases specified by law

120. The basic rules for collection of public funds and the procedure for their disbursement shall be regulated

121. The Executive Authority shall not contract a loan or bind itself to a project entailing expenditure of funds from the State Treasury in the course of a subsequent period, except with the approval of the People's Assembly

122. The rules governing the granting of salaries, pensions, indemnities, subsidies and bonuses from the State Treasury shall be determined by law which shall also regulate the cases excepted from these rules, and the authorities charged with their application

123. The rules and procedures for granting concessions relating to investment of the sources of natural wealth and of public utilities shall be determined by law; disposal, free of charge, of real estate properties belonging to the State or the ceding of moveable properties of the State and the rules and problems relating to them shall also be determined by law

124. Every member of the People's Assembly shall be entitled to address questions to the Prime Minister or any of his deputies or the Ministers or their deputies concerning matters within their jurisdiction

The Prime Minister, his deputies, the Ministers and the persons they delegate on their behalf shall answer the questions put to them by members

The member may withdraw his question at any time, this same question may not be transformed into an interpellation in the same session

125. Every member of the People's Assembly shall be entitled to address interpellations to the Prime Minister or his deputies or the Ministers or their deputies concerning matters within their jurisdiction

Debate on an interpellation shall take place at least seven days after its submission, except in the cases of urgency as decided by the Assembly and with the Government's consent

126. The Ministers shall be responsible collectively for the general policy of the State before the People's Assembly, also every Minister shall be responsible for the acts of his Ministry

The People's Assembly may decide to withdraw its confidence from any of the Prime Minister's deputies or from many of the Ministers or their deputies

A motion of no confidence should not be submitted except after an interpellation

Such a motion should be proposed by one-tenth of the Assembly's members

The Assembly should not decide on such a motion until after at least three days from the date of its presentation

Withdrawal of confidence shall be pronounced by the majority of the members of the Assembly

127. The People's Assembly shall determine the responsibility of the Prime Minister, on a proposal by one-tenth of its members

Such a decision should be taken by the majority of the members of the Assembly

It may not be taken except after an interpellation addressed to the Government, and after at least three days from the date of its presentation

In the event that such responsibility is determined, the Assembly shall submit a report to the President of the Republic including the elements of the subject, the conclusions reached on the matter and the reasons behind it

The President of the Republic may return such a report to the Assembly within ten days

If the Assembly ratifies it once again, the President of the Republic may put the subject of discord to a referendum. Such a referendum shall take place within thirty days from the date of the last ratification of the Assembly, in which case the Assembly sessions shall be terminated

If the result of the referendum is in support of the Government, the Assembly shall be considered dissolved, otherwise the President of the Republic shall accept the resignation of the council of Ministers

128. If the Assembly withdraw its confidence from any of the Prime Minister's deputies or of the Ministers or of their deputies, they shall resign their office

The Prime Minister shall submit his resignation to the President of the Republic if he is found responsible before the People's Assembly

129. Any twenty members, at least, of the People's Assembly may ask for the discussion of a public question to ascertain the Government's policy regarding such a question

130. The members of the People's Assembly shall be entitled to express their opinions concerning public question before the Prime Minister or any of his deputies or of the Ministers

131. The People's Assembly shall form an Ad Hoc Committee or entrust any of its Committees with the inspection of the activities of any of the administrative departments or the general establishments or any administrative or executive organ or any of the public projects, for the purpose of finding facts and informing the Assembly as to the actual financial or administrative or economic positions or for conducting investigations into a subject related to one of the said activities

In the course of its work, such a Committee shall be entitled to collect whatever evidence it deems necessary and to subpoena all those it needs

All executive and administrative bodies shall answer the demands of the Committee and put under its disposal all the documents and evidence it asks for this purpose

132. At the inaugural meeting of the ordinary session of the People's Assembly, the President of the Republic shall give a statement of the general policy of the State

He shall also give other statements before the Assembly

The Assembly is entitled to discuss the statement of the President of the Republic

133. After the formation of the Cabinet and at the inaugural meeting of the ordinary session of the People's Assembly, the Prime Minister shall submit the programme of the Government

The People's Assembly is entitled to discuss such programme

134. The Prime Minister, his deputies, the Ministers and their deputies may become members of the People's Assembly

Those of them who are not members may attend the sessions and Committees of the Assembly

135. The Prime Minister and Ministers shall be heard in the People's Assembly and its Committees whenever they request to speak

They may be assisted by high-ranking officials

A Minister shall have no counted vote when votes are taken, unless he is a member

136. The President of the Republic shall not dissolve the People's Assembly unless it is necessary and after a referendum of the people

The President of the Republic shall issue a decision terminating the sessions of the Assembly and conducting a referendum within thirty days

If the total majority of the voters approve the dissolution of the Assembly, the President of the Republic shall issue the decision of dissolution

The decision dissolving the Assembly shall comprise an invitation to the electors to conduct new elections for the People's Assembly within a period not exceeding sixty days from the date of the declaration of the referendum results

The new Assembly shall convene during a period of ten days following the completion of elections

### *CHAPTER III*

### **THE EXECUTIVE**

#### **Section I—The President of the Republic**

137. The President of the Republic shall assume executive power and shall exercise it in the manner stipulated in the Constitution

138. The President of the Republic in conjunction with the Government, shall lay down the general policy of the State and supervise its implementation in the manner prescribed in the Constitution

139. The President of the Republic may appoint one or more Vice-Presidents, define their jurisdiction and relieve them of their posts

The rules relating to the calling into account of the President of the Republic shall be applicable to the Vice-Presidents

140. Before exercising his functions, the Vice-President shall take the following oath before the President of the Republic

"I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully and to safeguard the independence and territorial integrity of the motherland"

141. The President of the Republic shall appoint the Prime Minister, his deputies, the Ministers and their deputies and relieve them of the posts

142. The President of the Republic shall have the right to call a meeting of the Council of Ministers and to attend its meeting

He shall also preside over the meetings he attends

He shall be entitled to demand reports from the Ministers

143. The President of the Republic shall appoint the civil and military officials, and the diplomatic representatives, and dismiss them in the manner prescribed by the law

He shall also accredit the diplomatic representatives of foreign states

144. The President of the Republic shall issue the necessary regulations for the implementation of the laws, in the manner that would not modify, obstruct or exempt them from execution

He shall have the right to vest others with authority to issue them

The law may determine whoever issues the decisions requisite or its implementation

145. The President of the Republic shall issue the control regulations

146. The President of Republic shall issue the decisions necessary for organising the public services and interests

147. In case it becomes necessary, during the recess between the sessions of the People's Assembly, to take measures which cannot suffer delay, the President of the Republic shall issue decisions in their respect, which shall have the force of law

Such decisions must be submitted to the People's Assembly within fifteen days from their date of issuance if the Assembly is standing

In case of dissolution or recess of the Assembly, they shall be submitted at its first meeting

In case they are not submitted, their force of law disappears with retroactive effect, without need for issuing a decision to this effect

If they are submitted and are not ratified, their force of law disappears with retroactive effect, unless the Assembly ratifies their validity in the previous period or settling their effects in another way

148. The President of the Republic shall proclaim a state of emergency in the manner prescribed by the law

Such proclamation must be submitted to the People's Assembly within the subsequent fifteen days in order that the Assembly may take a decision thereon

In case the People's Assembly is dissolved, the matter shall be submitted to the new Assembly at its first meeting

In all cases, the proclamation of the state of emergency shall be for a limited period, which may not be extended unless by approval of the Assembly

149. The President of Republic shall have the right of granting amnesty or commute a sentence

As for general amnesty, it can only be granted by virtue of a law

150. The President of Republic shall be the Supreme Commander of the Armed Forces

He shall be the authority who declares war, after the approval of the People's Assembly

151. The President of Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with a suitable clarification

They shall have the force of law after their conclusion, ratification and publication according to the established procedure

However, peace treaties, alliance pacts, commercial and maritime and all the treaties involving modifications in the territory of the State, or having connection with the rights of sovereignty, or which lay upon the Treasury of the State certain charges not provided for in the budget, must acquire the approval of the People's Assembly

152. The President of the Republic may call a referendum of the people on important matters affecting the supreme interests of the country

## Section II—The Government

153. The Government shall be the supreme executive and administrative organ of the State

It shall consist of the Prime Minister, his deputies, the Ministers and their deputies

The Prime Minister shall supervise the work of the Government

154. Whoever is appointed Minister or Deputy Minister must be an Egyptian, not less than 35 Gregorian years of age, and enjoying full civil and political rights

155. Before exercising the functions of their posts, the members of the Cabinet shall take the following oath before the President of the Republic

"I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully, and to safeguard the independence and territorial integrity of the motherland"

156. The Cabinet shall exercise the following functions in particular

a) Laying down the general policy of the State, and controlling its implementation in collaboration with the President of the Republic in accordance with the Presidential laws and decrees

b) Directing, coordinating and following up the works of the ministries, their affiliated organs, and the public organisations and institutions

c) Issuing administrative and executive decisions in accordance with the laws and decrees, as well as supervising their implementation

d) Preparing the draft laws and decrees

e) Preparing the draft of the general budget of the State

f) Preparing the overall plan

g) Contracting and granting loans in accordance with the rules of the Constitution

h) Supervising the implementation of laws, maintaining State security and protecting the rights of the citizens and the interests of the State

157. The Minister shall be the administrative Supreme Chief of his Ministry

He shall undertake the laying down of the Ministry's policy in the framework of the State's general policy, and shall undertake its implementation

158. During the term of his office, the Minister shall not practice a free profession—a commercial or financial or industrial occupation, buy or rent any State property, or lease or sell to or barter with the State any of his own property

159. The President of the Republic and the People's Assembly shall have the right to bring a Minister to trial for crimes committed by him in the performance of, or because of, the duties of his post

The decision of the People's Assembly to charge a Minister shall be adopted upon a proposal submitted by at least one-fifth of its members

No indictment shall be issued except by a majority of two-thirds of the members of the Assembly

160. Any minister indicted shall cease to function until his case is decided

The termination of his services shall not prevent legal action being taken or pursued against him

The trial of a Minister, the procedures and guarantees of the trial, and the indictment shall be in accordance with the manner prescribed by the law

These rules shall be in force with regard to the Deputy Ministers

### **Section III—The Local Administration**

161. The Arab Republic of Egypt shall be divided into administrative units, enjoying moral entities, among which shall be governorates, cities and villages

Other administrative units may be established, having moral entities, if this may be required by the common interest

162. Local People's Councils shall be gradually formed, on the level of administrative units, by direct election, providing that half of their members at least shall be workers and farmers

The law shall provide for the gradual transfer of authority to them

Presidents and Vice-Presidents of the Councils shall be selected from among their members by mean of elections

163. The law shall prescribe the way of formation of the local People's Councils, their competencies, their financial resources, the guarantees for their competencies, their financial resources, the guarantees for their members, their relations to the People's Assembly and to the Government, and their role in preparing and implementing the development plan and in controlling the various activities

### **Section IV—The National Specialized Councils**

164. Specialized Councils shall be established on the national level to assist in laying down the general policy of the State in all fields of national endeavour

These councils are to be affiliated to the President of the Republic

A Presidential decree shall determine the formation and functions of each Council

## **CHAPTER IV**

### **THE JUDICIARY AUTHORITY**

165. The Judiciary Authority shall be independent

It shall be exercised by courts of justice of different sorts and classes, which shall issue their judgments in accordance with the law

166. Judges shall be independent, subject to no other authority but the law

No authority may intervene in the cases or in justice affairs

167. The law shall determine the judiciary organisations and their functions, organise the way of their formation, prescribe the conditions and measures for the appointment and transfer for their members

168. The status of Judges shall be irrevocable

The law shall regulate the disciplinary actions with regard to them

169. The sessions of the courts shall be made public, unless a court

decides to hold them *in camera*, for considerations of public order or morality

*In all cases, judgments shall be pronounced in public sessions*

170. The people shall contribute in maintaining justice, in accordance with the manner, and the limits, prescribed by the law

171. The law shall regulate the organisation of the State Security Courts, and prescribe their competencies and the conditions to be fulfilled by those who occupy the office of judge in them

172. The State Council shall be an independent judiciary organisation which has the competence decisions in administrative disputes, and disciplinary cases

*The law shall determine its other competencies*

173. A Supreme Council, presided over by the President of the Republic, shall supervise the affairs of the judiciary organisations

*The law shall prescribe its formation, its competencies, and its rules of action*

*It shall be consulted with regard to draft laws organising the affairs of the judiciary organisations*

## CHAPTER V

### SUPREME CONSTITUTIONAL COURT

174. The Supreme Constitutional Court shall be an independent judiciary body, having its own moral person in the Arab Republic of Egypt, and having its seat in Cairo

175. The Supreme Constitutional Court alone shall undertake the judicial control in respect of the constitutionality of the laws and regulations, and shall undertake the explanation of the legislative texts, all of which in accordance with the manner prescribed by the law

*The law shall determine the other competencies of the court, and regulate the procedure to be followed before it*

176. The law shall organise the way of formation of the Supreme Constitutional Court, and prescribe the conditions required in its members, their rights and immunities

177. The status of members of the Supreme Constitutional Court shall be irrevocable

*The Court shall call to account its members, in the manner prescribed by the law*

178. The judgment issued by the Supreme Constitutional Court in constitutional cases, and its decisions concerning the interpretation of legislative texts, shall be published in the Official Gazette

*The law shall organise the effects subsequent to a decision concerning the unconstitutionality of legislative text*

## CHAPTER VI

### THE SOCIALIST PUBLIC PROSECUTOR

179 The Socialist Public Prosecutor shall be responsible for taking the procedures which secure the people's rights, the safety of the society and its political system, the preservation of the socialist achievements, and commitment to the socialist behaviour

The law shall define his other competencies

He shall be subject to the control the People's Assembly in accordance to what is prescribed by law

## CHAPTER VII

### ARMED FORCES AND THE NATIONAL DEFENSE COUNCIL

180. The State alone shall establish the Armed Forces which shall belong the people

Their duty shall be to protect the country, safeguard its territory and security, and protect the socialist achievements of the popular strife

No organisation or group may establish military or semi-military formations

The law shall prescribe the conditions of service and promotion for the Armed Forces

181. General mobilisation shall be organised in accordance with the law

182. A council shall be established, the National Defence Council, over which the President of the Republic shall preside, and which shall undertake the examination of the matter pertaining to the methods of ensuring the safety and security of the country

The law shall prescribe its other prerogatives

183. The law shall organise military judiciary, prescribing their competencies in the framework of the principles in the Constitution

## CHAPTER VIII

### POLICE

184. Police Authority shall be a civil disciplinary body

Its Supreme Chief shall be the President of the Republic

Police Authority shall perform its duty in the people's services, maintain peace and security for the citizens, preserve order, public security and morality, and undertake the implementation of the duties imposed upon it by laws and regulations, in the manner prescribed by the law

## PART VI

### GENERAL AND TRANSITIONAL PROVISIONS

185. The city of Cairo shall be the capital of the Arab Republic of Egypt

186. The law shall prescribe the national flag and the provisions relating thereto, as well as the State emblem and the provisions relating thereto

187. Provisions of the laws shall apply only from the date of their entry into force, and shall have no retroactive effect

However, provisions to the contrary may be made, in other than criminal matters, with the approval of the majority of the members of the People's Assembly

188. All laws shall be published in the Official Gazette within two weeks from the date of their issuance

They shall be put in force after a month following the date of their publication unless another date is fixed for that

189. The President of the Republic, as well as the People's Assembly, may request the amendment of one or more of the Constitution Articles

The Articles to be revised and the reasons justifying such amendment must be mentioned in the request for amendment

In case the request emanates from the People's Assembly, it should be signed by at least one-third of the Assembly members

In all cases, the Assembly shall discuss the amendment in principle and the decision in this respect shall be taken by the majority of its members

If the request is rejected, the amendment of the same particular articles may not be requested again before the expiration of one year from the date of such rejection

If the People's Assembly approves the principle of revision, the Articles requested to be mended shall be discussed after two months from the date of the said approval

If the modification is approved by two-thirds of the members of the Assembly, it must be referred to the people for a plebiscite

If the amendment is approved, it shall be considered in force from the date of the announcement of the result of the plebiscite

190. The term of the present President of the Republic shall be terminated at the end of six years from the date of announcing his election as President of the Arab Republic of Egypt

191. All the provisions of the laws and regulations prior to the proclamation of this Constitution shall remain valid and in force

However, they may be repealed or amended in this Constitution

192. The Supreme Court shall exercise its competencies prescribed in the law concerning its establishment until the formation of the Supreme Constitutional Court is completed

193. This Constitution shall be in force as from the date of announcing the approval of the people, in this respect, in the plebiscite

## **PART SEVEN**

### **NEW RULINGS**

#### **CHAPTER I**

#### **THE SHOURA ASSEMBLY\***

194. The Shoura Assembly is concerned with the study and proposal of what it deems necessary to preserve the principles of the July 23, 1952 Revolution and the May 15, 1971 Revolution, to consolidate national unity and social peace, to protect the alliance of the working forces of the people and the socialist gains as well as the basic components of society, its supreme values, its rights and liberties and its public duties, and to entrench the democratic socialist system and widen its scope

195. The Shoura Assembly shall be consulted in the following

- 1 Proposals for the amendment for one or more articles of the Constitution
- 2 Draft laws complementary to the Constitution
- 3 Draft of the general plan for social and economic development
- 4 Peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights
- 5 Draft laws referred to the Assembly by the President of the Republic
- 6 Whatever matters referred to the Assembly by the President of the Republic relative to the general policy of the State or its policy regarding Arab or foreign affairs

The Assembly shall submit to the President of the Republic and the People's Assembly its opinion such matters

196. The Shoura Assembly shall be composed of a number of members defined by the law, not less than 132 members

Two-thirds of the members shall be elected by direct secret public balloting, half of whom at least must be workers and farmers

The President of the Republic shall appoint the other third

197. The law shall determine the electoral constituencies of the Shoura Assembly, the number of members in every constituency, and the necessary conditions stipulated in the elected or appointed members of the Shoura Assembly

198. The term of membership of the Shoura Assembly is six years, whereas renewed election and appointment of 50% of the total number of members, whether elected or appointed, is every three years as defined by law

It is always possible to re-elect or re-appoint those membership has expired

199. The Shoura Assembly shall elect a President and two Vice-Presidents at its first ordinary annual session for a period of three years

If one of these offices becomes vacant, the Assembly shall elect a successor for the rest of the term.

200. No member can hold office in both People's Assembly and the Shoura Assembly at one and the same time

201. The Prime Minister and his deputies, the Ministers and Government officials shall not be held responsible to the Shoura Assembly

202. The President of the Republic has the right to make a statement upon the general policy of the State or upon any other matter before a joint meeting of the People's Assembly and the Shoura Assembly, headed by the Speaker of the People's Assembly

The President of the Republic has the right to make whatever statements he wishes before the Shoura Assembly

203. The Prime Minister and the Ministers and other Government officials may make statements before the Shoura Assembly or before one of its committees upon a subject that comes within his competence

The Prime Minister and his deputies and other Government officials shall be heard by the Shoura Assembly and its committees upon their request, and they may seek the assistance of any Government official, as they see fit

However, the vote of the Minister or Government official is not valid upon any count of votes unless he is a member

204. The President of the Republic may not dissolve the Shoura Assembly except when necessary, while such a decision should comprise a call to hold new elections for the Shoura Assembly within a period of sixty days from the date of its dissolution

The Assembly shall hold its first meeting ten days from the date of its election

205. The following Articles of the Constitution shall apply to the Shoura Assembly

(89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 129, 130, 134), insofar as they are not incompatible with the stipulations cited in this Part

The Shoura Assembly and its President shall exercise the competencies specified in the aforementioned Articles

## CHAPTER II

### THE PRESS

206 The Press is a popular, independent authority exercising its revocation in accordance with the stipulations of the Constitution and the law

207. The Press shall exercise its true vocation freely and independently in the service of society through all means of expression

It shall thus interpret the trend of public opinion, while contributing to its formation and orientation within the framework of the basic components of society, the safeguard of the liberties, rights and public duties and respect

of the sanctity of the private lives of citizens, as stipulated in the Constitution and defined by law

**208.** The freedom of the press is guaranteed and press censorship is forbidden

Also forbidden is to threaten, suppress, or foreclose a newspaper through administrative measures, as stipulated in the Constitution and defined by law

**209.** The freedom of body corporate, whether public or private, or political parties to publish or own newspapers is safeguarded in accordance with the law

The financing and ownership of newspapers come under the supervision of the people, as stipulated in the Constitution and defined by law

**210.** Journalists have the right to obtain news and information according to the regulations set by law

Their activities are not subject to any authority other than the law

**211.** A Supreme Press Council shall deal with matters concerning the press

The law shall define its composition, competencies and its relationship with the State authorities

The Supreme Press Council shall exercise its competencies with a view to consolidate the freedom of the press and its independence, to uphold the basic foundations of society, and to guarantee the soundness of national unity and social peace as stipulated in the constitution and defined by law

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# 13

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## CONSTITUTION OF FRANCE

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(Adopted on 28 Sept. 1958 - Fifth Republic)

### PREAMBLE

The French people hereby solemnly proclaim their dedication to the Rights of Man and the principle of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble to the 1946 Constitution

By virtue of these principles and that of the free determination of peoples, the Republic offers to the Overseas Territories expressly desiring this to adhere to them new institutions based on the common ideal of liberty, equality, and fraternity and conceived with a view to their democratic evolution

### TITLE 0 COMMUNITY

#### 1. Institution of Community

(1) The Republic and the peoples of the Overseas Territories who, by free determination, adopt the present Constitution thereby institute a Community

Note .

Amended 1962 - presidential elections  
1992 - Maastricht Treaty  
1993 - immigration law, not included  
26 July 1995 - referendum, not included

(2) The Community shall be based on the equality and solidarity of the peoples composing it

## **TITLE I**

### **SOVEREIGNTY**

#### **2 State Form and Symbols**

(1) France is an indivisible, secular, democratic, and social Republic. It ensures the equality of all citizens before the law, without distinction as to origin, race, or religion. It respects all beliefs.

(2) The language of the Republic is French.

(3) The national emblem is the blue, white, and red tricolor flag.

(4) The national anthem is the "Marseillaise."

(5) The Motto of the Republic is "Liberty, Equality, Fraternity."

(6) Its principle is Government of the people, by the people, and for the people.

#### **3 Electoral Rights**

(1) National sovereignty belongs to the people, who exercise it through their representatives and by means of referendums.

(2) No section of the people, nor any individual, may abrogate to themselves or to him or herself the exercise thereof.

(3) Suffrage may be direct or indirect under the terms stipulated by the Constitution. It shall always be universal, equal, and secret.

(4) All French citizens of both sexes who have attained their majority and enjoy civil and political rights may vote under the conditions determined by law.

#### **4. Political Parties**

Political parties and groups shall be instrumental in the exercise of the suffrage. They shall be freely formed and shall freely carry on their activities. They must respect the principles of national sovereignty and democracy.

## **TITLE II**

### **THE PRESIDENT OF THE REPUBLIC**

#### **5 Presidential Office**

(1) The President of the Republic shall see that the Constitution is observed. He shall ensure, by his arbitration, both the proper functioning of the governmental authorities and the continuity of the State.

(2) He shall be the guarantor of national independence, the integrity of the territory and observance of Community agreements, and of treaties.

#### **6 Term of Presidency**

The President of the Republic shall be elected for seven years by direct

universal suffrage. The procedures implementing this Article shall be laid down in an organic Act

#### 7. Election of President

(1) The President of the Republic shall be elected by an absolute majority of the votes cast. If this is not obtained on the first ballot, there shall be a second ballot on the next Sunday but one. Only the two candidates who have won the greatest number of votes in the first ballot may stand in it, after taking into account, if applicable, any withdrawals of candidates who have received a higher vote

(2) Voting shall begin at the formal summons of the Government

(3) The election of the new President shall take place not less than twenty days and not more than thirty-five days before the expiry of the powers of the President in office

(4) In the event of the Presidency of the Republic falling vacant for any cause whatsoever, or of an impediment being formally recorded by the Constitutional Council upon referral to it by the Government and ruling by an absolute majority of its members, the functions of the President of the Republic, with the exception of those laid down in Articles 11 and 12 below, shall be temporarily exercised by the President of the Senate, or, if the latter is in his turn impeded from exercising these functions, by the Government. In the event of a vacancy, or when the impediment is declared permanent by the Constitutional Council, polling for the election of a new President shall take place, except in cases of force majeure formally recognized by the Constitutional Council, not less than twenty days and not more than thirty-five days after the beginning of the vacancy or the declaration of the permanence of the impediment. If one of the persons who publicly announced their decision to stand for election less than thirty days before the final date for lodging the presentations of candidature dies or is otherwise prevented within seven days prior to that date, the Constitutional Council may decide to postpone the election.

(5) If one of the candidates dies or is otherwise prevented before the first ballot, the Constitutional Council shall pronounce the postponement of the election

(6) Should one of the candidates heading the poll in the first ballot die or be otherwise prevented prior to any withdrawals, the Constitutional Council shall declare that the election procedure must be repeated in full, the same shall apply in the event of one of the candidates standing in the second ballot dying or being otherwise prevented

(7) All cases shall be referred to the Constitutional Council in the manner set out in the second paragraph of Article 61 below or determined for the presentation of candidates in the organic Act provided for in Article 6 above

(8) The Constitutional Council may extend the periods stipulated in the third and fifth paragraphs provided that polling takes place not later than thirty-five days after the Constitutional Council's decision. If implementation

of the provisions of this paragraph results in the postponement of the election to a date after the expiry of the powers of the President in office, the latter shall remain in office until the proclamation of his successor

(9) Neither Articles 9 and 50 nor Article 89 of the Constitution may be applied while the Presidency of the Republic is vacant, nor during the period between the declaration of the permanence of the impediment preventing the President of the Republic from discharging his duties and the election of his successor

## **8. Prime Minister**

(1) The President of the Republic shall appoint the Prime Minister. He shall terminate that appointment when the latter tenders the resignation of the Government

(2) On the proposal of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments

## **9. Council of Ministers**

The President of the Republic shall preside over the Council of Ministers

## **10. Promulgation, Veto**

(1) The President of the Republic shall promulgate laws within fifteen days following the transmission to the Government of the said laws as finally adopted

(2) He may, before expiry of this time limit, ask Parliament to reconsider a law or certain of its articles

This reconsideration may not be refused

## **11. Referendum**

(1) The President of the Republic may, on the proposal of the Government during sessions, or on a joint motion of the two Assemblies published in the Official Journal, submit to a referendum any bill dealing with the organization of the governmental authorities, entailing approval of a Community agreement or providing for authority to ratify a treaty which, though not unconstitutional, would affect the functioning of existing institutions

(2) When the referendum decides in favor of the bill, the President of the Republic shall promulgate it within the time limit stipulated in the preceding article

## **12. Dissolution of National Assembly**

(1) The President of the Republic may, after consultation with the Prime Minister and the Presidents of the Assemblies, pronounce the dissolution of the National Assembly. A General election shall take place not less than twenty days and not more than forty days after the dissolution

(2) The National Assembly shall meet *ipso jure* on the second Thursday following its election. If this meeting takes place outside the periods provided for ordinary sessions, a session shall *ipso jure* be held for a fifteen-day period

(3) No further dissolution may take place within a year following this election

### **13. Powers of President and Council of Ministers**

(1) The President of the Republic shall sign the ordinances and orders decided upon in the Council of Ministers

(2) He shall make appointments to the civil and military posts of the State

(3) Conseillers d'Etat, the Grand Chancelier de la Legion d'Honneur, Ambassadors and Envoys Extraordinary, Conseillers Maitres of the Cour des Comptes, Prefects, Government representatives in the Overseas Territories, General Officers, Recteurs d'academies and Directors of central administrations shall be appointed by the Council of Ministers

(4) An organic Act shall determine the other posts to be filled by decision of the Council of Ministers, together with the conditions under which the power of appointment of the President of the Republic may be delegated by him and exercised in his name

### **14. Diplomatic Affairs**

The President of the Republic shall accredit Ambassadors and Envoys Extraordinary to foreign powers, foreign Ambassadors and Envoys Extraordinary shall be accredited to him

### **15. Commander in Chief of Armed Forces**

The President of the Republic shall be Commander-in-Chief of the armed forces. He shall preside over the Higher National Defence Councils and committees

### **16 State of Emergency**

(1) When the institutions of the Republic, the independence of the nation, the integrity of its territory, or the fulfillment of its international commitments are under grave and immediate threat and when the proper functioning of the constitutional governmental authorities is interrupted, the President of the Republic shall take the measures demanded by these circumstances after official consultation with the Prime Minister, the Presidents of the Assemblies, and the Constitutional Council

(2) He shall inform the nation of these measures by a message

(3) These measures must be prompted by a will to ensure within the shortest possible time that the constitutional governmental authorities have the means of fulfilling their duties. The Constitutional Council shall be consulted with regard to such measures

(4) Parliament shall meet *ipso jure*

(5) The National Assembly may not be dissolved during the exercise of emergency powers

### **17. Right of Pardon**

The President of the Republic shall have the right of pardon

**18. Messages to Parliament**

(1) The President of the Republic shall communicate with the two parliamentary Assemblies by means of messages, of which he shall order a reading and which shall not give rise to any debate

(2) Between sessions, Parliament shall be convened especially for this purpose

**19. Countersignature of Prime Minister**

Official decisions of the President of the Republic other than those provided for under Articles 8 (1), 11, 12, 16, 18, 54, 56 and 61 shall be countersigned by the Prime Minister and, where applicable, by the responsible ministers

**TITLE III****THE GOVERNMENT****20. Governmental Functions**

(1) The Government shall determine and conduct the policy of the nation

(2) It shall have at its disposal the administration and the armed forces

(3) It shall be responsible to Parliament under the conditions and in accordance with the procedures stipulated in Articles 49 and 50

**21. Head of Government**

(1) The Prime Minister shall direct the conduct of Government affairs. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to the provisions of Article 13, he shall exercise the power to make regulations and to make appointments to civil and military posts

(2) He may delegate certain of his powers to Ministers

(3) Should the occasion arise, he shall deputize for the President of the Republic as Chairman of the Councils and Committees provided for under Article 15

(4) On an exceptional basis, he may deputize for him as chairman of a meeting of the Council of Ministers by explicit delegation and for a specific agenda

**22. Countersignature of Ministers**

The official decisions of the Prime Minister shall be countersigned, where appropriate, by the ministers responsible for their implementation

**23. Incompatibility**

(1) Membership of the Government shall be incompatible with the exercise of any Parliamentary mandate, with the holding of any representational office at national level in a trade organization, and with any public employment or professional activity

(2) An organic Act shall determine the conditions under which the holders of such mandates, offices, or employment shall be replaced

(3) Members of Parliament shall be replaced in accordance with the provisions of Article 25

#### **TITLE IV**

### **PARLIAMENT**

#### **24. National Assembly, Senate**

(1) Parliament shall consist of the National Assembly and the Senate

(2) Deputies of the National Assembly shall be elected by direct suffrage

(3) The Senate shall be elected by indirect suffrage. It shall ensure the representation of the territorial entities of the Republic. French nationals living outside France shall be represented in the Senate

#### **25. Election Act**

(1) An organic Act shall determine the term for which each Assembly is elected, the number of its members, their emoluments, the conditions of eligibility and ineligibility and the offices incompatible with membership of the Assemblies

(2) It shall likewise lay down the conditions governing the election, in the event of a vacancy, of persons to replace deputies or senators whose seats have been vacated until new general or partial elections are held for the Assembly concerned

#### **26. Indemnity, Immunity**

(1) No member of Parliament may be prosecuted or subjected to inquiry, arrest, detention, or trial on account of opinions expressed or votes cast in the course of his or her duties

(2) No member of Parliament may, during parliamentary sessions, be prosecuted or arrested for a felony or misdemeanor without the authority of the Assembly of which he or she is a member, except in cases of flagrante delicto

(3) When Parliament is not in session, no member of Parliament may be arrested without the authority of the bureau of the Assembly of which he or she is a member, except in the case of flagrante delicto, authorized prosecution, or final sentence

(4) The detention or prosecution of a member of Parliament shall be suspended if the Assembly of which he or she is a member so demands

#### **27. Unrestricted Decisions**

(1) All mandatory instructions shall be null and void

(2) The right to vote of the members of Parliament shall be personal

(3) An organic Act may, exceptionally, authorize the delegation of a vote. In this case, no member may be delegated to cast more than one vote

**28. Parliamentary Sessions**

- (1) Parliament shall convene *ipso jure* in two ordinary sessions per year
- (2) The first session shall begin on 2 April and last for thirty days
- (3) The second session shall open on 2 October and last for not more than ninety days
- (4) If 2 October or 2 April is a public holiday, the session shall open on the first working day thereafter

**29. Extraordinary Sessions**

- (1) Parliament shall convene in extraordinary session, at the request of the Prime Minister or of a majority of the members of the National Assembly, to consider a specific agenda
- (2) When an extraordinary session is held at the request of the members of the National Assembly, the closure order shall take effect as soon as Parliament has exhausted the agenda for which it was convened and at the latest twelve days from the opening date of the session
- (3) Only the Prime Minister may request a further session before the end of the month following the closure order

**30. Opening and Closing Procedure**

Apart from cases in which Parliament meets *ipso jure*, extraordinary sessions shall be opened and closed by order of the President of the Republic

**31. Presence of Government**

- (1) The members of the Government shall have access to the two Assemblies. They shall be heard when they so request
- (2) They may call for the assistance of Government Commissioners

**32. Presidents of National Assembly and Senate**

The President of the National Assembly shall be elected for the duration of the legislature. The President of the Senate shall be elected after each partial renewal

**33. Publicity**

- (1) The meetings of the two Assemblies shall be public. A full report of the debates shall be published in the Official Journal
- (2) Each Assembly may sit in Secret Committee at the request of the Prime Minister or of one-tenth of its members

**TITLE V****RELATIONS BETWEEN PARLIAMENT AND GOVERNMENT****34. Legislative Powers**

- (1) All legislation shall be passed by Parliament
- (2) Legislation shall establish the rules concerning

— civil rights and the fundamental guarantees granted to the citizens for the exercise of their public liberties, the national defence obligations imposed on citizens in respect of their persons or property,

— nationality, status, and capacity of persons, property rights arising out of a matrimonial relationship, inheritance, and gifts,

— determination of felonies and misdemeanors, together with the penalties applicable to them, criminal procedure, amnesty, the creation of new jurisdictions and the status of judges,

— the assessment bases, rates, and methods of collecting taxes of all types, the issuance of currency

(3) Legislation shall likewise determine the regulations concerning

— the electoral systems of the parliamentary Assemblies and local Assemblies,

— the creation of categories of public establishments,

— the fundamental guarantees granted to civil and military personnel employed by the State,

— company nationalizations and transfers of company ownership from the public to the private sector

(4) Legislation shall determine the fundamental principles of

— the general organization of national defence,

— free local Government and the powers and resources of local authorities,

— education,

— the rules governing property rights, chattels real, civil and commercial obligations,

— labour and trade-union law and social security

(5) Finance acts shall determine the financial resources and obligations of the State, subject to the conditions and reservations laid down in an organic Act

(6) Program Acts shall specify the objectives of State economic and social policy

(7) The provisions of this Article may be developed in detail and amplified by an organic Act

### 35. Declaration of War

A declaration of war must be authorized by Parliament

### 36. Declaration of Martial War

(1) Martial law shall be declared in a meeting of the Council of Ministers

(2) Parliament alone may authorize its extension beyond twelve days

### 37. Regulations

(1) Matters other than those that fall within the sphere of legislation shall be determined by regulation

(2) Legislation concerning these matters may be amended by orders issued after consultation with the *Conseil d'Etat*. Any such legislative texts introduced after this Constitution has entered into force shall be amended by order only if the Constitutional Council has pronounced that the matters they deal with fall within the field subject to regulation as defined in the preceding paragraph.

### 38. Ordinances

(1) The Government may, in order to carry out its program, ask Parliament to authorize it, for a limited period, to take by Ordinance measures normally within the legislative sphere.

(2) Ordinances shall be enacted in meetings of the Council of Ministers after consultation with the *Conseil d'Etat*. They shall come into force upon their publication, but shall become null and void if the Bill for their ratification is not submitted to Parliament before the date set by the enabling act.

(3) Upon expiry of the period referred to in the first paragraph of this Article, the Ordinances may be amended only by act of Parliament in respect of those matters which are within the legislative domain.

### 39. Right to Initiative

(1) The Prime Minister and the members of Parliament have concurrent rights to initiate legislation.

(2) Government bills shall be discussed in the Council of Ministers after consultation with the *Conseil d'Etat* and shall be tabled in one of the two Assemblies. Finance bills shall be submitted first to the National Assembly.

### 40. Private Members' Bills

Private Members' Bills and amendments shall be inadmissible if their adoption would have the effect of reducing public revenue or of creating or increasing an item of public expenditure.

### 41. Declaration of Inadmissibility

(1) If it is found in the course of the legislative procedure that a Private Member's Bill or amendment is not within the domain of law or is contrary to a delegation granted by virtue of Article 38, the Government may declare its inadmissibility.

(2) In the event of disagreement between the Government and the President of the Assembly concerned, the Constitutional Council, at the request of either party, shall rule within eight days.

### 42. Discussion of Bills

(1) In the first Assembly to which it is referred, a Government Bill shall be discussed on the basis of the text put forward by the Government.

(2) An Assembly which has before it a Bill passed by the other Assembly shall deliberate on the text transmitted to it.

**43. Referral to Committees**

(1) Government and Private Members' Bills shall, at the request of the Government or of the Assembly considering them, be referred for examination to Committees specially appointed for this purpose

(2) Government and Private Members' Bills for which such a request has not been made shall be referred to one of the Standing Committees, the number of which shall be limited to six in each Assembly

**44. Altering Bills**

(1) Members of Parliament and the Government shall have the right of amendment

(2) After the opening of the debate, the Government may object to any amendment being considered which has not previously been submitted to Committee

(3) If the Government so requests, the Assembly concerned shall decide, in a single vote, on all or part of the text under discussion, retaining only the amendments proposed or accepted by the Government

**45. Legislative Conflicts**

(1) If, owing to disagreement between the two Assemblies, it has proved impossible to adopt a Government or Private Member's bill after two readings by each Assembly, or, if the Government has declared the matter urgent, after a single reading by each of them, the Prime Minister shall have the right to call for a meeting of a joint committee composed of an equal number of members of each Assembly, to propose a text on the matters still under discussion

(2) The text drafted by the Joint Committee may be submitted by the Government to the two Assemblies for approval. No amendment shall be admissible except by agreement with the Government

(3) If the Joint Committee fails to agree on a common text, or if this text is not adopted under the conditions set forth in the preceding paragraph, the Government may, after a further reading by the National Assembly and Senate, ask the National Assembly to make a final decision. In this event, the National Assembly may return either to the text drafted by the joint committee, or to the last text passed by itself, modified, if applicable, by one or more of the amendments adopted by the Senate

**46. Legislative Procedures**

(1) Acts defined under the Constitution as organic shall be passed and amended as follows

(2) A Government or Private Member's Bill shall be submitted for discussion and to a vote in the first Assembly in which it has been tabled not less than fifteen days after that tabling

(3) The procedure of Article 45 shall be applicable. Nevertheless, in the absence of agreement between the two Assemblies, a bill may be adopted by the National Assembly on final reading only by an absolute majority of its members

(4) Organic Acts relating to the Senate must be passed in the same wording by the two Assemblies

(5) Organic Acts may be promulgated only after the Constitutional Council has declared them constitutional

#### 47. Finance Bill Procedures

(1) Parliament shall pass Finance Bills under the conditions stipulated by an organic Act

(2) Should the National Assembly fail to reach a decision at the first reading within forty days of a Bill being tabled the Government shall refer it to the Senate which must come to a decision within fifteen days. The procedure set forth in Article 45 shall then apply.

(3) Should Parliament fail to reach a decision within seventy days, the provisions of the Bill may be brought into force by Ordinance

(4) Should the Finance Bill establishing the revenue and expenditure of a fiscal year not be tabled in time for its promulgation before the beginning of that fiscal year, the Government shall, on an emergency basis, ask Parliament for authority to collect taxes and shall make available by order the funds needed to provide for services already approved.

(5) The time limits stipulated in this Article shall be suspended when Parliament is not sitting

(6) The Cour des Comptes shall assist Parliament and the Government in supervising the implementation of the Finance Acts

#### 48. Order of Deliberation

(1) The discussion of bills tabled by the Government and of private Members' Bills agreed to by it shall have priority on the agendas of the Assemblies in the order decided by the Government.

(2) One meeting per week shall be reserved in priority for members' questions and the Government's replies

#### 49. Policy Discussions, Motion of Censure

(1) The Prime Minister, after deliberation by the Council of Ministers may commit the Government's responsibility before the National Assembly with regard to its program or, should the occasion arise, to a statement of general policy.

(2) The National Assembly may challenge the responsibility of the Government by passing a motion of censure. Such a motion shall be admissible only if signed by at least one-tenth of the members of the National Assembly. The vote may not take place until forty-eight hours after the motion has been tabled; the only votes counted shall be those in favour of the motion of censure which may be adopted only by a majority of the membership of the Assembly. Should the motion of censure be rejected, its signatories may not introduce another such motion in the course of the same session, except in the case provided for in the following paragraph.

(3) The Prime Minister may, after deliberation by the Council of Ministers, commit the Government's responsibility to the National Assembly on the passing of a Bill. In this case, the text shall be regarded as carried unless a motion of censure, tabled within the succeeding twenty-four hours, is passed under the conditions laid down in the previous paragraph.

(4) The Prime Minister may ask the Senate to approve a general policy statement.

#### **50. Resignation of Government**

If the National Assembly adopts a motion of censure, or rejects the Government's program or a general policy statement by the latter, the Prime Minister must tender the Government's resignation to the President of the Republic.

#### **51. Postponed Closure of Session**

The closure of ordinary or extraordinary sessions shall be postponed *ipso jure*, should the occasion arise, in order to apply the provisions of Article 49.

### **TITLE VI**

## **TREATIES AND INTERNATIONAL AGREEMENTS**

#### **52. President's Powers**

(1) The President of the Republic shall negotiate and ratify treaties.

(2) He shall be informed of all negotiations leading to the conclusion of an international agreement not subject to ratification.

#### **53. Important Treaties**

(1) Peace treaties, commercial treaties and treaties or agreements relating to international organization, or implying a financial commitment on the part of the State, or modifying provisions of a legislative nature, or relating to the status of persons, or entailing a cession, exchange or adjunction of territory, may be ratified or approved only by Act of Parliament.

(2) They shall take effect only after having been ratified or approved.

(3) No cession, exchange, or adjunction of territory shall be valid without the consent of the populations concerned.

#### **54. Constitutional Revisions for Ratification**

If, upon the demand of the President of the Republic, the Prime Minister or the President of one or other Assembly or sixty deputies or sixty senators, the Constitutional Council has ruled that an international agreement contains a clause contrary to the Constitution, the ratification or approval of this agreement shall not be authorized until the Constitution has been revised.

#### **55. Force of Law, Principle of Reciprocity**

Duly ratified or approved treaties or agreements shall, upon their publication, override laws, subject, for each agreement or treaty, to its application by the other party.

## **TITLE VII**

### **THE CONSTITUTIONAL COUNCIL**

#### **56. Membership**

(1) The Constitutional Council shall consist of nine members, whose term of office shall last nine years and shall not be renewable. One third of the membership of the Constitutional Council shall be renewed every three years. Three of its members shall be appointed by the President of the Republic, three by the President of the National Assembly, three by the President of the Senate.

(2) In addition to the nine members provided for above, former Presidents of the Republic shall be *ex-officio* life members of the Constitutional Council.

(3) The President shall be appointed by the President of the Republic. He shall have the casting vote in the event of a tie.

#### **57. Incompatibility**

The office of member of the Constitutional Council shall be incompatible with that of Minister or member of Parliament. Other incompatibilities shall be determined by an organic Act.

#### **58. Control of Presidential Elections**

(1) The Constitutional Council shall ensure the regularity of the election of the President of the Republic.

(2) It shall examine complaints and proclaim the results of the vote.

#### **59. Control of Assembly Elections**

The Constitutional Council shall rule, in the case of a dispute, on the regularity of elections of deputies and senators.

#### **60. Control of Referendums**

The Constitutional Council shall ensure the regularity of referendums and proclaim the results thereof.

#### **61. Control of Parliamentary Acts**

(1) Organic Acts, before their promulgation, and standing orders of the parliamentary Assemblies, before their implementation, must be submitted to the Constitutional Council which shall rule on their constitutionality.

(2) To the same end, Acts of Parliament may, before their promulgation, be submitted to the Constitutional Council by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty deputies or sixty senators.

(3) In the cases provided for by the two preceding paragraphs, the Constitutional Council must rule 'within one month. However, at the Government's request, this period shall be reduced to eight days if a matter is urgent.

(4) In these same cases, referral to the Constitutional Council shall suspend the time limit for promulgation

#### 62. Voidability by Control

(1) A provision declared unconstitutional may not be promulgated or implemented

(2) The decisions of the Constitutional Council shall not be subject to appeal to any jurisdiction. They shall be binding on the governmental authorities and on all administrative and jurisdictional authorities

#### 63. Rules of Procedure

An organic Act shall determine the organizational and operational rules of the Constitutional Council, the procedure to be followed before it, and in particular the periods of time allowed for referring disputes to it.

### TITLE VIII THE JUDICIARY

#### 64. Independence

(1) The President of the Republic shall be the guarantor of the independence of the Judiciary

(2) He shall be assisted by the Conseil Supérieur de la Magistrature.

(3) An organic Act shall determine the status of members of the Judiciary.

(4) Judges may not be removed from office.

#### 65. Conseil Supérieur

(1) The Conseil Supérieur de la Magistrature shall be presided over by the President of the Republic.

The Minister of Justice shall be its ex-officio Vice-President. He may deputize for the President of the Republic

(2) The Conseil Supérieur shall, in addition, comprise nine members appointed by the President of the Republic under the terms laid down by an organic Act

(3) The Conseil Supérieur shall make proposals for appointments of Judges of the Cour de Cassation and of Presiding Judges of the Courts of Appeal. It shall give its opinion, under the conditions stipulated by the organic Act, on the proposals of the Minister of Justice relative to appointments of other Judges. It shall be consulted on questions of pardon under conditions determined by an organic Act.

(4) The Conseil Supérieur shall act as the disciplinary council for Judges. In such cases, it shall be presided over by the Presiding Judge of the Cour de Cassation.

#### 66. Personal Freedom

(1) No one may be arbitrarily detained.

(2) The Judiciary, guardian of individual liberty, shall enforce this principle under the conditions stipulated by legislation

### ***TITLE IX***

## **THE HIGH COURT OF JUSTICE**

### **67. Membership**

(1) A High Court of Justice shall be instituted.

(2) It shall be composed of members elected in equal number by the National Assembly and the Senate from within their ranks after each general or partial election to these Assemblies. It shall elect its President from among its members.

(3) An organic law shall determine the composition of the High Court, its operating rules and the procedure to be followed before it.

### **68. Liability of President and Government**

(1) The President of the Republic shall not be held accountable for actions performed in the exercise of his office except in the case of high treason. He may be indicted only by the two Assemblies ruling by identical vote in open balloting and by an absolute majority of their members. He shall be tried by the High Court of Justice.

(2) The members of the Government shall be criminally liable for actions performed in the exercise of their office and deemed to be felonies or misdemeanors at the time they were committed. The procedure defined above shall be applied to them and to their accomplices, in the case of a conspiracy against the security of the State. In the cases provided for by this paragraph, the High Court shall be bound by the definition of felonies and misdemeanors, as well as by the determination of penalties as laid down by the criminal law in force when the acts are committed.

### ***TITLE X***

## **THE ECONOMIC AND SOCIAL COUNCIL**

### **69. Opinion on Bills**

(1) The Economic and Social Council shall, upon referral to it by the Government, give its opinion on Government Bills, Draft Ordinances and orders, and Private Members' Bills submitted to it.

(2) A member of the Economic and Social Council may be designated by it to present before the parliamentary Assemblies the Council's opinion on the Government or Private Members' Bills submitted to it.

### **70. Consultation**

The Economic and Social Council may likewise be consulted by the Government on any problem of an economic or social nature concerning the Republic or the Community. Any plan or program Bill of an economic or social nature shall be submitted to it for its advice.

**71. Membership**

The composition of the Economic and Social Council and its rules of procedure shall be determined by an organic Act

**TITLE XI****TERRITORIAL ENTITIES****72. Definition, Creation, Self-Government**

(1) The territorial entities of the Republic are the communes, departments, and overseas territories. Any other territorial entities shall be created by legislation.

(2) These entities shall freely govern themselves through elected councils and under the conditions stipulated by legislation.

(3) In the departments and territories, the Government Delegate shall be responsible for the national interests, administrative supervision, and law enforcement.

**73. Adjustments for Overseas Departments**

Measures of adjustment required by the particular circumstances of the overseas departments may be taken with regard to their legislative system and administrative organization.

**74. Overseas Territories**

(1) The Overseas Territories of the Republic shall have a special organization taking account of their specific interests within the general interests of the Republic.

(2) The status of the Overseas Territories shall be determined by constitutional enactments defining, in particular, the powers of their own institutions; changes to their status can be made in the same form, after consultation of the Territorial Assembly concerned.

(3) The other aspects of their particular structure are defined and modified by Act of Parliament, after consultation of the Territorial Assembly concerned.

**75. Civil Status**

Citizens of the Republic who do not have ordinary civil status as referred to in Article 34 shall retain their personal status as long as they have not renounced it.

**76. Territorial Status, National Self-Determination**

(1) The Overseas Territories may retain their status within the Republic.

(2) If they express a will to do so by decision of their Territorial Assemblies taken within the time limit set in the first paragraph of Article 91, they shall become overseas departments of the Republic or, either jointly or severally, member States of the Community.

## TITLE XII

### THE COMMUNITY

#### 77. Autonomy

(1) In the Community instituted under this Constitution, the States shall enjoy autonomy, they shall conduct their own administration and manage their own affairs democratically and freely

(2) There shall be only one citizenship of the Community

(3) All citizens shall be equal before the law, regardless of their origin, race or religion. They shall have the same duties

#### 78. Common Jurisdiction

(1) The Community's jurisdiction shall cover foreign policy, defence, currency, common economic and financial policy, as well as policy on strategic raw materials

(2) It shall also include, except in the case of specific agreements, supervision of justice, higher education and the general organization of external transport, transport within the Community, and telecommunications

(3) Special agreements may create other common jurisdictions or regulate any transfer of jurisdiction from the Community to one of its members

#### 79. Transitional Regulations

(1) The member States shall benefit from the provisions of Article 77 as soon as they have exercised the choice set out in Article 76

(2) Until the measures required for implementation of this title come into force, matters within the common jurisdiction shall be regulated by the Republic

#### 80. Representation and Institutions

(1) The President of the Republic shall preside over and represent the Community

(2) The institutional organs of the Community shall be an Executive Council, a Senate, and a Court of Arbitration

#### 81. Mutual Representation

(1) The member States of the Community shall participate in the election of the President in accordance with the conditions stipulated in Article 6

(2) The President of the Republic, in his capacity as President of the Community, shall be represented in each State of the Community

#### 82. Executive Council

(1) The Executive Council of the Community shall be presided over by the President of the Community. It shall consist of the Prime Minister of the Republic, the Heads of Government of each of the member States of the Community, and the Ministers responsible for matters common to the Community

(2) The Executive Council shall organize the cooperation of members of the Community at Government and administrative levels

(3) The organization and procedure of the Executive Council shall be determined by an organic Act

### 83. Senate of the Community

(1) The Senate of the Community shall be composed of delegates chosen by the Parliament of the Republic and the Legislative Assemblies of the other Community members from among their own memberships. The number of delegates of each State shall be determined according to its population and the responsibilities it assumes in the Community.

(2) It shall hold two sessions a year, each of which shall be opened and closed by the President of the Community and may not last longer than one month.

(3) At the behest of the President of the Community, it shall deliberate on common economic and financial policy prior to legislation on these matters being voted upon by the Parliament of the Republic and, as and when applicable, by the legislative Assemblies of the other Community members.

(4) The Senate of the Community shall examine the Acts and treaties or international agreements referred to in Articles 35 and 53 and which commit the Community.

(5) It shall make enforceable decisions in the domains in which it has received delegation of power from the Legislative Assemblies of the Community members. These decisions shall be promulgated in the same form as legislation in the territory of each of the States concerned.

(6) An organic Act shall determine its composition and rules of procedure.

### 84. Court of Arbitration

(1) A Court of Arbitration of the Community shall rule on litigation occurring between members of the Community.

(2) Its composition and jurisdiction shall be determined by an organic Act.

### 85. Alteration of this Title

(1) Notwithstanding the procedure provided for in Article 89, the provisions of this Title that concern the functioning of the common institutions shall be amendable by identically worded acts passed by the Parliament of the Republic and the Senate of the Community.

(2) The provisions of this Title may also be amended by agreements concluded between all the States of the Community, the new provisions shall be brought into force under the conditions required by the Constitution of each State.

### 86. Change of Status

(1) A change of status of a member State of the Community may be

requested, either by the Republic, or by resolution of the Legislative Assembly of the State concerned, confirmed by a local referendum organized and supervised by the Community institutions. The terms and conditions of such a change shall be determined by agreement approved by the Parliament of the Republic and the Legislative Assembly concerned.

(2) In the same manner, a member State of the Community may become independent. It shall thereby cease to belong to the Community.

(3) A member State of the Community may also, by agreement, become independent without thereby ceasing to belong to the Community.

(4) An independent State outside the Community may, by agreement, join the Community without ceasing to be independent.

(5) The position of these States within the Community shall be determined by agreements concluded to that end, in particular those referred to in the preceding paragraphs and, where applicable, those provided for in the second paragraph of Article 85.

#### **87. Parliamentary Approval**

The special agreements concluded in implementation of this Title shall be approved by the Parliament of the Republic and the Legislative Assembly concerned.

### ***TITLE XIII***

## **AGREEMENTS OF ASSOCIATION**

#### **88. Association of Other States**

The Republic or the Community may make agreements with States that wish to associate themselves with the Community in order to develop their civilizations.

### ***TITLE XIV***

## **AMENDMENT**

#### **89. Special Procedures**

(1) The initiative for amending the Constitution shall belong both to the President of the Republic on the proposal of the Prime Minister and to the members of Parliament.

(2) A Government or Private Member's Bill for amendment must be passed by the two Assemblies in identical terms. The amendment shall become definitive after approval by referendum.

(3) Nevertheless, the proposed amendment shall not be submitted to a referendum when the President of the Republic decides to submit it to Parliament convened in Congress; in this case, the proposed amendment shall be approved only if it is accepted by a three-fifths majority of the votes cast. The Bureau of the Congress shall be that of the National Assembly.

(4) No amendment procedure may be undertaken or followed when the integrity of the territory is in jeopardy

(5) The republican form of Government shall not be subject to amendment

## **TITLE XV**

### **TRANSITIONAL PROVISIONS**

#### **90. New Parliament**

(1) The ordinary session of Parliament is suspended. The mandate of the members of the present National Assembly shall expire on the day that the Assembly elected under this Constitution convenes

(2) Until that day, the Government alone shall have the authority to convene Parliament

(3) The mandate of the members of the Assembly of the French Union shall expire at the same time as the mandate of the members of the present National Assembly

#### **91. Other Institutions and Offices**

(1) The institutions of the Republic provided for by this Constitution shall be established within four months after its promulgation

(2) This time limit shall be extended to six months for the Community institutions

(3) The powers of the President of the Republic now in office shall expire only when the results of the election provided for in Articles 6 and 7 of this Constitution are proclaimed

(4) The member States of the Community shall participate in this first election under the conditions deriving from their status on the date of promulgation of the Constitution

(5) The established authorities shall continue to perform their functions in these States in accordance with the legislation and regulations applicable at the time of entry into force of the Constitution, until the authorities provided for by their new regimes are set up

(6) Until it is definitively constituted, the Senate shall consist of the present members of the Conseil de la République. The organic Acts that will determine the definitive composition of the Senate must be passed before July 31, 1959

(7) The powers conferred on the Constitutional Council by Articles 58 and 59 of the Constitution shall be exercised, until this Council has been set up, by a committee composed of the Vice-President of the Conseil d'Etat, as Chairman, the Presiding Judge of the Cour de Cassation, and the Presiding Judge of the Cour des Comptes

(8) The peoples of the member States of the Community shall continue to be represented in Parliament until the measures required to implement Title XII have been put into effect

**92. Establishment by Special Ordinances**

(1) The legislative measures necessary for the setting up of the institutions and, until they are set up, for the functioning of the governmental authorities, shall be taken by the Council of Ministers, after consultation with the Conseil d'Etat, in the form of ordinances having legislative force

(2) During the period laid down in Article 91 (1), the Government shall be authorized to determine, by ordinances having legislative force and passed in the same way, the electoral system of the Assemblies provided for by the Constitution

(3) During the same period and under the same conditions, the Government may also, on all matters, take the measures it deems necessary for the life of the nation, the protection of citizens or the safeguarding of liberties

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# 14

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## CONSTITUTION OF FEDERAL REPUBLIC OF GERMANY

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### PREAMBLE

Conscious of their responsibility before God and men, animated by the purpose to serve world peace as an equal part in a unified Europe, the German People have adopted, by virtue of their constituent power, this Constitution

The Germans in the States of Baden-Wurtemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Constitution is thus valid for the entire German People

### CHAPTER I BASIC RIGHTS

#### 1. Human Dignity

(1) Human dignity is inviolable. To respect and protect it is the duty of all State authority

(2) The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world

(3) The following basic rights are binding on legislature, executive, and judiciary as directly enforceable law

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Note — Amendments up to and including the 43rd Amendment on 3 Nov 1995 have been included

## **2. Liberty**

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or against morality

(2) Everyone has the right to life and to physical integrity. The freedom of the person is inviolable. Intrusion on these rights may only be made pursuant to a statute

## **3. Equality**

(1) All humans are equal before the law

(2) Men and women are equal. The state supports the effective realization of equality of women and men and works towards abolishing present disadvantages

(3) No one may be disadvantaged or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions. No one may be disadvantaged because of his handicap

## **4. Freedom of Faith, of Conscience, and of Creed**

(1) Freedom of creed, of conscience, and freedom to profess a religious or non-religious faith are inviolable

(2) The undisturbed practice of religion is guaranteed

(3) No one may be compelled against his conscience to render war service involving the use of arms. Details are regulated by a federal statute

## **5. Freedom of Expression**

(1) Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There will be no censorship

(2) These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honor

(3) Art and science, research and teaching are free. The freedom of teaching does not release from allegiance to the Constitution

## **6. Marriage and Family, Illegitimate Children**

(1) Marriage and family are under the special protection of the State

(2) Care and upbringing of children are the natural right of the parents and primarily their duty. The State supervises the exercise of the same

(3) Against the will of the persons entitled to their upbringing, children may only be separated from the family, pursuant to a statute, where those so entitled failed or where, for other reasons, the children are endangered to become seriously neglected

(4) Every mother is entitled to protection by and care of the community.

(5) Illegitimate children, by legislation have to be provided with the same conditions for their physical and mental development and for their place in society as are legitimate children

## 7. Education

(1) The entire schooling system stands under the supervision of the State

(2) The persons entitled to the upbringing of a child have the right to decide whether the child shall attend religion classes.

(3) Religion classes form part of the ordinary curriculum in State schools, except for secular schools. Without prejudice to the State's right of supervision, religious instruction is given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction

(4) The right to establish private schools is guaranteed. Private schools, as a substitute for State schools, require the approval of the State and are subject to the statutes of the States. Such approval has to be given where private schools are not inferior to the State schools in their educational aims, their facilities, and the professional training of their teaching staff, and where segregation of pupils according to the means of their parents is not encouraged. Approval has to be withheld where the economic and legal position of the teaching staff is not sufficiently assured.

(5) A private elementary school has to be permitted only where the education authority finds that it serves a special pedagogic interest, or where, on the application of persons entitled to upbringing of children it is to be established as an interdenominational school or as a school based on a particular religious or non-religious faith and only if a State elementary school of this type does not exist in the commune.

(6) Preliminary schools remain abolished

## 8. Freedom of Assembly

(1) All Germans have the right, without prior notification or permission, to assemble peaceably and unarmed

(2) With regard to open-air assemblies, this right may be restricted by or pursuant to a statute.

## 9. Freedom of Association

(1) All Germans have the right to form clubs and societies

(2) Associations, the purposes or activities of which conflict with criminal statutes or which are directed against the constitutional order or the concept of international understanding, are prohibited

(3) The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and for all professions. Agreements which restrict or seek to impair this right are null and void, measures directed to this end are illegal. Measures taken pursuant to Articles 12a, 35 (2) and (3), 87a (4), or 91 may not be directed against industrial conflicts engaged in by associations to safeguard and improve working and economic conditions in the sense of the first sentence of this paragraph.

#### **10. Privacy of Letters, Posts and Telecommunications**

(1) The privacy of letters as well as the secrecy of post and telecommunication is inviolable.

(2) Restrictions may only be ordered pursuant to a statute. Where a restriction serves the protection of the free democratic basic order or the existence or security of the Federation or a State, the statute may stipulate that the person affected shall not be informed and that recourse to the courts shall be replaced by a review of the case by bodies and auxiliary bodies appointed by Parliament.

#### **11. Freedom of Movement**

(1) All Germans enjoy freedom of movement throughout the Federal territory.

(2) This right may be restricted only by or pursuant to a statute and only in cases in which an adequate basis for personal existence is lacking and special burdens would result therefrom for the community, or in which such restriction is necessary to avert an imminent danger to the existence or the free democratic basic order of the Federation or a State, to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents, to protect young people from neglect, or to prevent crime.

#### **12. Right to Choose an Occupation, Prohibition of Forced Labour**

(1) All Germans have the right to freely choose their occupation, their place of work, and their place of study or training. The practice of an occupation can be regulated by or pursuant to a statute.

(2) No person may be forced to perform work of a particular kind except within the framework of a traditional compulsory community service that applies generally and equally to all.

(3) Forced labour may be imposed only on persons deprived of their liberty by court sentence.

#### **12a. Liability to Military and Other Service**

(1) Men who have attained the age of eighteen years can be required to serve in the Armed Forces, in the Federal Border Guard, or in a civil defence organization.

(2) A person who refuses, on grounds of conscience, to render war service involving the use of arms can be required to render a substitute service. The duration of such substitute service may not exceed the duration of military service. Details are regulated by a statute which may not interfere

with freedom to take a decision based on conscience and which must also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard

(3) Persons liable to military service who are not required to render service pursuant to paragraph (1) or (2) can, during a State of defence, be assigned by or pursuant to a statute to an employment involving civilian services for defence purposes, including the protection of the civilian population, assignments to employments subject to public law are only admissible for the purpose of discharging police functions or such other functions of public administration as can only be discharged by persons employed under public law. Employments according to the first sentence of this paragraph can also be established with the Armed Forces, in the area of their supply services, or with public administrative authorities, assignments to employment connected with supply services for the civilian population are only admissible to provide for their vital provisions or to guarantee their safety

(4) Where, during a State of defence, civilian service requirements in the civilian health system or in the stationary military hospital organization cannot be met on a voluntary basis, women between eighteen and fifty-five years of age can be assigned to such services by or pursuant to a statute. They may in no case render service involving the use of arms

(5) Prior to the existence of a State of defence, assignments under paragraph (3) may only be made where the requirements of Article 80a (1) are satisfied. To prepare services mentioned in paragraph (3) for which special knowledge or skills are required, persons can be obliged by or pursuant to a statute to attend training courses. Insofar, the first sentence of this paragraph does not apply

(6) Where, during a State of defence, staffing requirements for the purposes referred to in paragraph (3) 1 cannot be met on a voluntary basis, the freedom of Germans to quit the pursuit of his occupation or quit his place of work may be restricted by or pursuant to a statute in order to meet these requirements. Paragraph (5) 1 applies *mutatis mutandis* prior to the existence of a State of defence

### 13 Inviolability of the Home

(1) The home is inviolable

(2) Searches may be ordered only by a Judge or, in the event of danger resulting from any delay, by other organs legally specified, and they may be carried out only in the form prescribed by law

(3) Intrusions and restrictions may otherwise only be made to avert a general danger or a mortal danger to individuals, or, pursuant to a statute, to prevent present danger to public safety and order, particularly to relieve a housing shortage, to combat the danger of epidemics, or to protect endangered juveniles

#### 14. Property. Right of Inheritance. Taking of Property

(1) Property and the right of inheritance are guaranteed. Their content and limits are determined by statute.

(2) Property imposes duties. Its use should also serve the public weal.

(3) The taking of property is only permissible in the public weal. It may be imposed only by or pursuant to a statute regulating the nature and extent of compensation. Such compensation has to be determined by establishing an equitable balance between the public interest and the interests of those affected. Regarding disputes about the amount of compensation, recourse to the courts of ordinary jurisdiction is available.

#### 15. Socialization

State, natural resources and means of production can, for the purpose of socialization, be transferred to public ownership or other forms of collective enterprise by a statute regulating the nature and extent of compensation. Regarding such compensation, Article 14, § 3 and 4 applies mutatis mutandis.

#### 16. Deprivation of Citizenship. Extradition. Right of Asylum

(1) German citizenship may not be taken away. The loss of citizenship may only be imposed pursuant to a statute and against the will of the person affected only where such person does not become stateless as a result thereof.

2. No German may be extradited to a foreign country.

#### 16a. Right to Asylum

(1) Persons persecuted on political grounds enjoy the right of asylum.

(2) The right of paragraph 1 cannot claim - no matter from a European Communities country or from another country where the application of the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties is ensured - States outside of the European Communities for which the prerequisites of the first sentence hold true are determined by a statute requiring the consent of the Senate. In the case of the first sentence, measures to end a stay can be effected independent of recourse to the course sought against these measures.

(3) By statute requiring the consent of the Senate States can be determined in which, on the basis of law, law application or general political conditions, it seems to be guaranteed that neither persecution on political grounds nor inhuman or degrading punishment and treatment takes place. A foreigner from such a State is presumed to not being persecuted unless he asserts facts supporting that, contrary to this presumption, he is politically persecuted.

4. The effectuation of measures to end a stay will, in the case of paragraph 3, and in other cases where the claim to stay is obviously unfounded or is regarded as obviously unfounded, only be suspended if court order if serious doubts arise concerning the legality of the measure. The scope of scrutiny can be limited and delayed assessments ignored. Details are regulated by a statute.

(5) Paragraphs (1) to (4) are not contrary to public law contracts of European Communities member States among each other and with other States which, honoring the obligations arising from the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties the application of which has to be ensured in the contracting States, regulate responsibilities to examine claims of asylum including mutual acknowledgement of asylum decisions.

#### 17. Right of Petition

Everyone has the right, individually or jointly with others, to address written requests or complaints to the competent agencies and to parliaments.

#### 17a. Defence and Substitute Service

(1) Statutes concerning military service and substitute service can, by provisions applying to members of the Armed Forces and of the substitute services during their period of military or substitute service, restrict the basic right to freely express and disseminate opinions in speech, writing and pictures (first half-sentence of Article 5 (1)), the basic right of assembly (Article 8), and the right of petition (Article 17) insofar as this right permits the submission of requests or complaints jointly with others.

(2) Statutes serving defence purposes including the protection of the civilian population can provide for the restriction of the basic rights of freedom of movement (Article 11) and inviolability of the home (Article 13).

#### 18. Forfeiture of Basic Rights

Whoever abuses freedom of expression of opinion, in particular freedom of the press (Article 5 (1)), freedom of teaching (Article 5 (3)), freedom of assembly (Article 8), freedom of association (Article 9), privacy of letters and secrecy of post and telecommunication (Article 10), property (Article 14), or the right to asylum (Article 16a) in order to combat the free democratic basic order forfeit these basic rights. Such forfeiture and the extent thereof is determined by the Federal Constitutional Court.

#### 19. Restriction of Basic Rights

(1) Insofar as a basic right may, under this Constitution, be restricted by or pursuant to a statute such statute must apply generally and not solely to an individual case. Furthermore, such statute must name the basic right, indicating the relevant Article.

(2) In no case may the essence of a basic right be infringed.

(3) Basic rights also apply to domestic legal persons to the extent that the nature of such rights permits.

(4) Should any person's rights be violated by public authority, recourse to the court is open to him. Insofar as no other jurisdiction has been established, recourse is available to the courts of ordinary jurisdiction.

(2) 2 is not affected by the provisions of this paragraph.

## CHAPTER II

### THE FEDERATION AND THE STATES

#### 20. Basic Principles of State Order, Right to Resist

(1) The Federal Republic of Germany is a democratic and social Federal State

(2) All State authority emanates from the people. It is being exercised by the people through elections and voting and by specific organs of the legislature, the executive power, and the judiciary

(3) Legislation is subject to the constitutional order, the executive and the judiciary are bound by law and justice

(4) All Germans have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible

#### 20a. Protection of Natural Resources

The State, also in its responsibility for future generations, protects the natural foundations of life in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary

#### 21. Political Parties

(1) The political parties participate in the forming of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They have to publicly account for the sources and use of their funds and for their assets

(2) Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality

(3) Details are regulated by Federal statutes

#### 22. Federal Flag

The Federal flag is black, red, and gold

#### 23. European Union

(1) To realize a unified Europe, Germany participates in the development of the European Union which is bound to democratic, rule of law, social, and Federal principles and provides a protection of fundamental rights essentially equivalent to that of this Constitution. The federation can, for this purpose and with the consent of the Senate, delegate sovereign powers. Article 79 (2) and (3) is applicable for the foundation of the European Union as well as for changes in its contractual bases and comparable regulations by which the content of this Constitution is changed or amended or by which such changes or amendments are authorized

(2) The House of Representatives and the States, by their representation in the Senate, participate in matters of the European Union. The Government

has to thoroughly inform House of Representatives and Senate at the earliest possible time

(3) The Government allows for statements of the House of Representatives before it takes part in drafting European Union laws. The Government considers statements of the House of Representatives during deliberations. Detail are regulated by Federal statute.

(4) The Senate has to be included in the deliberations of the House of Representatives insofar as it would have to participate in a domestic measure or insofar as the States would be accountable domestically.

(5) Insofar as, in the area of exclusive legislative competence of the Federation, the interests of the States are affected or insofar as, in all other cases, the Federation has legislative competence, the Government considers the statement of the Senate. If legislative competencies of the States, the installation of their agencies, or their procedures are centrally affected, the opinion of the Senate has to be considered as decisive for the Federation's deliberation, the responsibility of the Federation for the whole State has to be maintained in the process. The consent of the Government is necessary in matters possibly resulting in higher expenses or lower revenues for the Federation.

(6) The Federation shall delegate the exercise of rights of the Federal Republic of Germany as a member of the European Union to a representative of the States nominated by the Senate if exclusive legislative competencies of the States are centrally affected. These rights are exercised with participation of and in coordination with the Government, the responsibility of the Federation for the whole State has to be maintained in the process.

(7) Details of paragraphs (4) to (6) are regulated by a statute requiring the consent of the Senate.

#### 24. Entry into a Collective Security System

(1) The Federation may by legislation transfer sovereign powers to intergovernmental institutions.

(1a) Insofar as the States are responsible for the exercise of State rights and the discharge of State duties, they can, with consent of the Government, delegate sovereign powers to institutions for neighborhood at State borders.

(2) For the maintenance of peace, the Federation may join a system of mutual collective security, in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.

(3) For the settlement of disputes between States, the Federation will accede to agreements concerning international arbitration of a general, comprehensive, and obligatory nature.

#### 25. Public International Law and Federal Law

The general rules of Public International law constitute an integral part of Federal law. They take precedence over statutes and directly create rights and duties for the inhabitants of the Federal territory.

**26. Ban on Preparing a War of Aggression**

(1) Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare war or aggression, are unconstitutional. They have to be made a criminal offence.

(2) Weapons designed for warfare may not be manufactured, transported, or marketed except with the permission of the Government. Details are regulated by a Federal statute.

**27. Merchant Fleet**

All German merchant vessels form one merchant fleet.

**28. Guarantee of Self-government**

(1) The constitutional order in the States must conform to the principles of the republican, democratic, and social State under the rule of law, within the meaning of this Constitution. In each of the States, counties, and communes, the people has to be represented by a body chosen in general, direct, free, equal, and secret elections. During elections in counties and communes, persons who possess the citizenship of a European Community country are eligible to vote and being elected according to the laws of the European Community. In communes, the communal assembly can take the place of an elected body.

(2) The communes must be guaranteed the right to regulate, on their own responsibility, all the affairs of the local community within the limits set by statute. Within the framework of their statutory functions, the associations of communes have such right of self-government as may be provided by statute. The right of self-government also encompasses the foundations of financial accountability.

(3) The Federation ensures that the constitutional order of the States conforms to the basic rights and to the provisions of paragraphs (1) and (2).

**29. New Delimitation of States Boundaries**

(1) A new delimitation of Federal territory may be made to ensure that the States by their size and capacity are able effectively to fulfill their functions. Due regard has to be given to regional, historical, and cultural ties, economic expediency, and the requirements of regional policy and planning.

(2) Measures for a new delimitation of Federal territory are effected by Federal statutes requiring confirmation by referendum. The States thus affected have to be consulted.

(3) A referendum is held in the States from whose territories or partial territories a new State or a State with redefined boundaries is to be formed (affected States). The referendum is held on the question whether the affected States are to remain within their existing boundaries or whether the new State or State with redefined boundaries should be formed. The referendum is deemed to be in favour of the formation of a new State or of a State with redefined boundaries where approval is given to the change by a majority in the future territory of such State and by a majority in all the territories or

partial territories of an affected State whose assignment to a State is to be changed in the same sense. The referendum is deemed not to be in favour where in the territory of one of the affected States a majority reject the change, such rejection is, however, of no consequence where in one part of the territory whose assignment to the affected State is to be changed a majority of two-thirds approve of the change, unless in the entire territory of the affected State a majority of two-thirds reject the change.

(4) Where in a clearly definable area of interconnected population and economic settlement, the parts of which lie in several States and which has a population of at least one million, one-tenth of those of its population entitled to vote in House of Representatives elections petition by popular initiative for the assignment of that area to one State, provision is made within two years in a Federal statute determining whether the delimitation of the affected States is changed pursuant to paragraph (2) or determining that a plebiscite is held in the affected States.

(5) The plebiscite establishes whether approval is given to a change of States delimitation to be proposed in the statute. The statute may put forward different proposals, not exceeding two in number, for the plebiscite. Where approval is given by a majority to a proposed change of States delimitation, provision is made within two years in a Federal statute determining whether the delimitation of the States concerned is changed pursuant to paragraph (2). Where approval is given, in accordance with paragraph (3) 3 and 4, to a proposal put forward for the plebiscite, a Federal statute providing for the formation of the proposed State is enacted within two years of the plebiscite and no longer requires confirmation by referendum.

(6) A majority in a referendum or in a plebiscite consists of a majority of the votes cast, provided that they amount to at least one quarter of the population entitled to vote in House of Representatives elections. Other detailed provisions concerning referendums, popular petitions, and plebiscites is made in a Federal statute, such statute may also provide that popular petitions may not be repeated within a period of five years.

(7) Other changes concerning the territory of the States may be effected by State agreements between the States concerned or by a Federal statute with the approval of the Senate where the territory which is to be the subject of a new delimitation does not have more than 50,000 inhabitants. Detailed provision are made in a Federal statute requiring the approval of the Senate and the majority of the members of the House of Representatives. It shall make provision for the affected communes and districts to be consulted.

(8) The States can change the delimitation of their territory or parts thereof deviating from the provisions in Paragraphs (2) to (7) by State contract. Affected communes and counties have to be consulted. The State contract needs to be confirmed by public referendum in each participating State. If a State contract affects only parts of the territory of a State, the public referendum can be limited to these parts. Sentence 5 Half-Sentence 2 is not applicable. The public referendum requires a majority of votes cast if such

majority contains at least one-fourth of the votes of all persons eligible for elections of the House of Representatives, details are regulated by a Federal Statute. The State contract requires the consent of the House of Representatives.

### 30. Competencies of Federation and States

Except as otherwise provided or permitted by this Constitution, the exercise of governmental powers and the discharge of governmental functions is incumbent on the States.

### 31. Precedence of Federal Law

Federal law takes precedence over State law.

### 32. Foreign Relations

(1) Relations with foreign States are a responsibility of the Federation.

(2) Before the conclusion of a treaty affecting the special circumstances of a State, that State has to be consulted in time.

(3) Insofar as the States have power to legislate, they may, with the consent of the Government conclude treaties with foreign States.

### 33. Equal Political Status of all Germans

(1) Every German has in every State the same political rights and duties.

(2) Every German is equally eligible for any public office according to his aptitude, qualifications, and professional achievements.

(3) Enjoyment of civil and political rights, eligibility for public office, and rights acquired in the public service are independent of religious denomination. No one may suffer any disadvantage by reason of his adherence or non-adherence to a denomination or to a philosophical persuasion.

(4) The exercise of State authority as a permanent function is, as a rule, entrusted to members of the public service whose status, service and loyalty are governed by public law.

(5) The law of the public service is regulated with due regard to the traditional principles of the professional civil service.

### 34. Liability in the Event of a Breach of Official Duty

Where any person, in the exercise of a public office entrusted to him, violates his official obligations to a third party, liability rests in principle on the State or the public body which employs him. In the event of wilful intent or gross negligence, the right of recourse against the holder of a public office is reserved. In respect of the claim for compensation or the right of recourse, the jurisdiction of the ordinary courts may not be excluded.

### 35. Legal, Administrative, Emergency Assistance

(1) All Federal and State authorities render each other legal and administrative assistance.

(2) In order to maintain or to restore public security or order, a State may, in cases of particular importance, call upon forces and facilities of the

Federal Border Guard to assist its police where without this assistance the police could not, or only with considerable difficulty, fulfil a task. In order to deal with a natural disaster or an especially grave accident, a State may request the assistance of the police forces of other States or of forces and facilities of other administrative authorities or of the Federal Border Guard or the Armed Forces.

(3) Where the natural disaster or the accident endangers a region larger than a State, the Government may, insofar as this is necessary to effectively deal with such danger, instruct the State Governments to place their police forces at the disposal of other States, and may use units of the Federal Border Guard or the Armed Forces to support the police forces. Measures taken by the Government pursuant to the first sentence of this paragraph have to be revoked at any time at the demand of the Senate, and otherwise immediately upon removal of the danger.

### 36. Personnel of the Federal Authorities

(1) Civil servants employed in the highest Federal authorities are drawn from all States in appropriate proportion. Persons employed in other Federal authorities should, as a rule, be drawn from the State in which they serve.

(2) Military laws also have to take into account the division of the Federation into States and the regional ties of their populations.

### 37. Federal Coercion

(1) Where a State fails to comply with its obligations of a Federal character imposed by this Constitution or another Federal statute, the Government may, with the consent of the Senate, take the necessary measures to enforce such compliance by the State by way of Federal coercion.

(2) For the purpose of exercising Federal coercion, the Government or its Commissioner has the right to give binding instructions to all States and their authorities.

## CHAPTER III

## THE HOUSE OF REPRESENTATIVES

### 38. Elections

(1) The deputies to the German House of Representatives are elected in general, direct, free, equal, and secret elections. They are representatives of the whole people, not bound by orders and instructions, and subject only to their conscience.

(2) Anyone who has attained the age of eighteen years is entitled to vote, anyone who has attained majority is eligible for election.

(3) Details are regulated by a Federal statute.

### 39. Assembly and Legislative Term

(1) The House of Representatives is elected for a four-year term. Its legislative term ends with the assembly of a new House of Representatives.

The new election are held forty-five months at the earliest, and forty-seven months at the latest after the beginning of the legislative term Where the House of Representatives is dissolved, the new election is held within sixty days

(2) The House of Representatives assembles, at the latest, on the thirtieth day after the election

(3) The House of Representatives determines the termination and resumption of its meetings The President of the House of Representatives may convene it at an earlier date He does so where one-third of its members or the President or the Chancellor so demand

#### **40. President, Rules of Procedure**

(1) The House of Representatives elects its President, Vice-Presidents, and Secretaries It draws up its rules of procedure

(2) The President exercises proprietary and police powers in the House of Representatives building No search or seizure may take place on the premises of the House of Representatives without his permission

#### **41. Scrutiny of elections**

(1) The scrutiny of elections is the responsibility of the House of Representatives It also decides whether a deputy has lost his seat in the House of Representatives

(2) Complaints against such decisions of the House of Representatives may be lodged with the Federal Constitutional Court

(3) Details are regulated by a Federal statute

#### **42. Proceedings, Voting**

(1) The debates of the House of Representatives are public Upon a motion of one-tenth of its members, or upon a motion of the Government, the public may be excluded by a two-thirds majority The decision on the motion is taken at a meeting not open to the public

(2) Decisions of the House of Representatives require a majority of the votes cast unless this Constitution provides otherwise The rules of procedure may provide for exceptions in respect of elections to be conducted by the House of Representatives

(3) True and accurate reports on the public meetings of the House of Representatives and of its committees does not give rise to any liability

#### **43. Presence of Members of Government and Senate**

(1) The House of Representatives and its Committees may demand the presence of any member of the Government

(2) The members of the Senate and of the Government as well as persons commissioned by them have access to all meetings of the House of Representatives and its Committees They are heard at any time

#### **44. Committees of Investigation**

(1) The House of Representatives has the right, and upon the motion of

one-quarter of its members the duty, to set up a Committee of Investigation, which takes the requisite evidence at public hearings. The public may be excluded.

(2) The rules of criminal procedure applies *mutatis mutandis* to the taking of evidence. The privacy of letters and the secrecy of post and telecommunication remain unaffected.

(3) Courts and administrative authorities are bound to render legal and administrative assistance.

(4) The decisions of Committees of Investigation is not subject to judicial consideration. The courts are free to evaluate and judge the facts on which the investigation is based.

#### 45. Committee 'European Union'

The House of Representatives establishes a Committee for European Union matters. It can empower the Committee to exercise the rights of the House of Representatives under Article 23 in its contact with the Government.

#### 45a. Committees on Foreign Affairs and Defence

(1) The House of Representatives appoints a Committee on Foreign Affairs and Committee on Defence.

(2) The Committee on Defence also has the rights of a Committee of Investigation. Upon the motion of one-quarter of its members it has the duty to make a specific matter the subject of investigation.

(3) Article 44 (1) does not apply to defence matters.

#### 45b. Defence Commissioner of the House of Representatives

A Defence Commissioner of the House of Representatives is appointed to safeguard the basic rights and to assist the House of Representatives in exercising parliamentary control. Details are regulated by a Federal statute.

#### 45c. Petitions Committee

(1) The House of Representatives appoints a Petitions Committee to deal with requests and complaints addressed to the House of Representatives pursuant to Article 17.

(2) The powers of the Committee to consider complaints is regulated by a Federal statute.

#### 46. Indemnity and Immunity of Deputies

(1) A deputy may not at any time be subjected to court proceedings or disciplinary action or otherwise called to account outside the House of Representatives for a vote cast or a statement made by him in the House of Representatives or in any of its Committees. This does not apply to defamatory insults.

(2) A deputy may not be called to account or arrested for a punishable offence except by permission of the House of Representatives, unless he is apprehended during commission of the offence or in the course of the following day.

(3) The permission of the House of Representatives also is necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18

(4) Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty is suspended at the demand of the House of Representatives

#### 47. Right of Deputies to Refuse to give Evidence

Deputies may refuse to give evidence concerning persons who have confided facts to them in their capacity as deputies, or to whom they have confided facts in such capacity, as well as evidence concerning these facts themselves. To the extent that this right of refusal to give evidence exists, no seizure of documents is permissible

#### 48. Entitlements of Deputies

(1) Any candidate for election to the House of Representatives is entitled to the leave necessary for his election campaign

(2) No one may be prevented from accepting and exercising the office of deputy. He may not be given notice of dismissal nor dismissed from employment on this ground

(3) Deputies are entitled to adequate remuneration ensuring their independence. They are entitled to the free use of all state-owned means of transport. Details are regulated by a Federal statute

49. {...}

## CHAPTER IV THE SENATE

### 50. Functions

The States participate through the Senate in the legislation and administration of the Federation and in European Union matters

### 51. Composition

(1) The Senate consists of members of the State Governments which appoint and recall them. Other members of such Governments may act as substitutes

(2) Each State has at least three votes, States with more than two million inhabitants have four, States with more than six million inhabitants five, and States with more than seven million inhabitants six votes

(3) Each State may delegate as many members as it has votes. The votes of each State may be cast only as a block vote and only by members present or their substitutes

### 52. President, Rules of Procedure

(1) The Senate elects its President for one year

(2) The President convenes the Senate. He convenes the Senate where delegates from at least two States or the Government so demand.

(3) The Senate takes its decisions with at least the majority of its votes. It draws up its rules of procedure. Its meetings are public. The public may be excluded.

(3a) For European Union matters, the Senate can establish a European Chamber whose decisions are considered decisions of the Senate, Article 51 (2) and (3) 2 is applicable *mutatis mutandis*.

(4) Other members or persons commissioned by State Governments may serve on the Committees of the Senate.

### 53. Presence of Members of the Government

The members of the Government have the right, and on demand the duty, to attend the meetings of the Senate and of its Committees. They have the right to be heard at any time. The Senate is being kept informed by the Government as regards the conduct of affairs.

## CHAPTER IVA THE JOINT COMMITTEE

### 53a. Composition, Rules of Procedure, Right to Information

(1) Two-thirds of the members of the Joint Committee are deputies of the House of Representatives and one-third are members of the Senate. The House of Representatives delegates its deputies in proportion to the relative strength of its parliamentary groups, deputies may not be members of the Government. Each State is represented by a Senate member of its choice, these members are not bound by instructions. The establishment of the Joint Committee and its procedures are regulated by rules of procedure to be adopted by the House of Representatives and requiring the consent of the Senate.

(2) The Government informs the Joint Committee about its plans in respect of a State of defence. The rights of the House of Representatives and its Committees under Article 43 (1) remain unaffected by the provision of this paragraph.

## CHAPTER V THE PRESIDENT

### 54. Election

(1) The President is elected, without debate, by the Federal Convention. Every German who is entitled to vote in House of Representatives elections and has attained the age of forty years is eligible for election.

(2) The term of office of the President is five years. Re-election for a consecutive term is permitted only once.

(3) The Federal Convention consists of the members of the House of Representatives and an equal number of members elected by the Parliaments of the States according to the principles of proportional representation

(4) The Federal Convention meets no later than thirty days before the expiration of the term of office of the President or, in the case of premature termination, not later than thirty days after that date. It is convened by the President of the House of Representatives

(5) After the expiration of a legislative term, the period specified in paragraph (4) 1 begins with the first meeting of the House of Representatives

(6) The person receiving the votes of the majority of the members of the Federal Convention is elected. Where such majority is not obtained by any candidate in two ballots, the candidate who receives the largest number of votes in the next ballot is elected

(7) Details are regulated by a Federal statute

### **55. Incompatibilities**

(1) The President may not be a member of the Government nor of a legislative body of the Federation or of a State

(2) The President may not hold any other salaried office, nor engage in an occupation, nor belong to the management or the board of directors of an enterprise carried on for profit

### **56. Oath of Office**

On assuming his office, the President takes the following oath before the assembled members of the House of Representatives and the Senate

"I swear that I will dedicate my efforts to the well-being of the German people, enhance their benefits, avert harm from them, uphold and defend the Constitution and the statutes of the Federation, fulfil my duties conscientiously, and do justice to all. So help me God."

The oath may also be taken without religious affirmation

### **57. Representation**

Where the President is prevented from acting, or where his office falls prematurely vacant, his powers are exercised by the President of the Senate

### **58. Countersignature**

Orders and directions of the President require, for their validity, the countersignature of the Chancellor or the appropriate Minister. This does not apply to the appointment and dismissal of the Chancellor, the dissolution of the House of Representatives under Article 63 and a request made under Article 69 (3)

### **59. Representation in International Relations**

(1) The President represents the Federation in its international relations. He concludes treaties with foreign States on behalf of the Federation. He accredits and receives Envoys

(2) Treaties which regulate the political relations of the Federation or relate to matters of Federal legislation requires the consent or participation, in the form of a Federal statute, of the bodies competent in any specific case for such Federal legislation. As regards administrative agreements, the provisions concerning the Federal administration applies *mutatis mutandis*

#### 59a. {...}

#### 60. Federal Judges, Civil Servants, Soldiers; Right of Pardon

(1) The President appoints and dismisses the Federal Judges, the Federal civil servants, the officers and non-commissioned officers, except as may otherwise be provided for by statute

(2) He exercises the right of pardon in individual cases on behalf of the Federation

(3) He may delegate these powers to other authorities

(4) Article 46 (2) to (4) apply *mutatis mutandis* to the President

#### 61. Impeachment before the Federal Constitutional Court

(1) The House of Representatives or the Senate may impeach the President before the Federal Constitutional Court for wilful violation of this Constitution or any other Federal statute. The motion of impeachment is filed by at least one-quarter of the members of the House of Representatives or one-quarter of the votes of the Senate. A decision to impeach requires a majority of two thirds of the members of the House of Representatives or of two-thirds of the votes of the Senate. The impeachment is pleaded by a person commissioned by the impeaching body

(2) Where the Federal Constitutional Court finds the President guilty of a wilful violation of this Constitution or of another Federal statute, it may declare him to have forfeited his office. After impeachment, it may issue an interim order preventing the President from exercising his functions

### CHAPTER VI THE GOVERNMENT

#### 62. Composition

The Government consists of the Chancellor and the Ministers

#### 63. Election and Appointment of the Chancellor

(1) The Chancellor is elected, without debate, by the House of Representatives upon the proposal of the President

(2) The person obtaining the votes of the majority of the members of the House of Representatives are elected. The person elected is appointed by the President

(3) Where the person proposed is not elected, the House of Representatives may elect within fourteen days of the ballot a Chancellor by more than one half of its members

(4) Where no candidate has been elected within this period, a new ballot takes place without delay in which the person obtaining the largest number of votes is elected. Where the person elected has obtained the votes of the majority of the members of the House of Representatives, the President appoints him within seven days of the election. Where the person elected did not obtain such a majority, the President, within seven days, either appoints him or dissolves the House of Representatives.

#### **64. Appointment of Ministers**

(1) The Ministers are appointed and dismissed by the President upon the proposal of the Chancellor.

(2) The Chancellor and the Ministers, on assuming office, take before the House of Representatives the oath provided for in Article 56.

#### **65. Powers exercised in the Government**

The Chancellor determines and is responsible for the general policy guidelines. Within the limits set by these guidelines, each Minister conducts the affairs of his department independently and on his own responsibility. The Government decides on differences of opinion between Ministers. The Chancellor conducts the affairs of the Government in accordance with rules of procedure adopted by it and approved by the President.

#### **65a Power of Command over the Armed Forces**

Power of command in respect of the Armed Forces is vested in the Minister of Defence.

#### **66 Incompatibilities**

The Chancellor and the Ministers may not hold any other salaried office, nor engage in an occupation, nor belong to the management or, without the consent of the House of Representatives, to the board of directors of an enterprise carried on for profit.

#### **67 Constructive Vote of No Confidence**

(1) The House of Representatives can express its lack of confidence in the Chancellor only by electing a successor with the majority of its members and by requesting the President to dismiss the Chancellor. The President complies with the request and appoints the person elected.

(2) Forty-eight hours must elapse between the motion and the election.

#### **68 Vote of Confidence, Dissolution of the House of Representatives**

(1) Where a motion of the Chancellor for a vote of confidence is not carried by the majority of the members of the House of Representatives, the President may, upon the proposal of the Chancellor, dissolve the House of Representatives within twenty-one days. The right of dissolution shall lapse as soon as the House of Representatives elects another Chancellor with the majority of its members.

(2) Forty-eight hours must elapse between the motion and the vote thereon.

**69. Members of the Government**

(1) The Chancellor appoints a Minister as his deputy

(2) The tenure of office of the Chancellor or a Minister end in any event on the assembly of a new House of Representatives, the tenure of office of a Minister also end on any other termination of the Chancellor's tenure of office

(3) At the request of the President, the Chancellor—or at the request of the Chancellor or of the President, a Minister—is bound to continue managing the affairs of his office until the appointment of a successor

**CHAPTER VII****FEDERAL LEGISLATIVE POWERS****70. Legislation of the Federation and the States**

(1) The States have the right to legislate insofar as this Constitution does not confer legislative power on the Federation

(2) The division of competence between the Federation and the States are determined by the provisions of this Constitution concerning exclusive and concurrent legislative powers

**71. Exclusive legislative power of the Federation**

In matters within the exclusive legislative power of the Federation, the States have power to legislate only where and to the extent that they are given such explicit authorization by a Federal statute

**72. Concurrent Legislative Power of the Federation**

(1) In the field of concurrent legislative power, the States have power to legislate as long as and to the extent that the Federation does not exercise its right to legislate by statute

(2) In this field, the Federation has legislation if and insofar as the establishment of equal living conditions in the Federal territory or the preservation of legal and economic unity necessitates, in the interest of the State at large, a Federal regulation

(3) A Federal statute can stipulate that a Federal regulation for which the conditions of paragraph (2) no longer hold true is replaced by law of the States

**73. Exclusive Legislative Power**

The Federation has exclusive power to legislate in the following matters.

1 foreign affairs and defence, including the protection of the civilian population,

2 citizenship in the Federation,

3 freedom of movement, passport matters, immigration, emigration and extradition,

4 currency, money and coinage, weights and measures, as well as the determination of standards of time,

5 the unity of the customs and trading area, treaties on commerce and on navigation, the freedom of movement of goods and the exchange of goods and payments with foreign countries, including customs and other frontier protection,

6 air transport,

6a the traffic of railroads owned completely or mainly by the Federation (railroads of the Federation), the construction, maintenance, and operation of railway tracks and railroads of the Federation as well as the charging for the use of these railways,

7 postal affairs and telecommunication,

8 the legal status of persons employed by the Federation and by Federal corporate bodies under public law,

9 industrial property rights, copyrights and publishing law

10 cooperation between the Federation and the States concerning

a) criminal police,

b) protection of the free democratic basic order, of the existence and the security of the Federation or of a State (protection of the constitution), and

c) protection against activities in the Federal territory which through the use of force or actions in preparation for the use of force endanger the foreign interests of the Federal Republic of Germany, as well as the establishment of a Federal Criminal Police Office and the international control of crime,

11 statistics for Federal purposes

#### 74. Concurrent Legislation

(1) Concurrent legislative powers cover the following matters

1 civil law, criminal law and execution of sentences, the organization and procedure of courts, the legal profession, notaries and legal advice

2 registration of births, deaths and marriages.

3 the law of association and assembly,

4 the law relating to residence and settlement of aliens,

4a the law relating to weapons and explosives

5 { }

6 refugee and expellee matters,

7 public welfare,

8 { }

9 war damage and reparations,

10 benefits to war-disabled persons and to dependents of those killed in the war as well as assistance to former prisoners of war

10a war graves of soldiers, graves of other victims of war and of victims of despotism,

11 the law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges and private insurance),

11a the production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances,

12 Labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance,

13 the regulation of educational and training grants and the promotion of scientific research,

14 the law regarding expropriation, to the extent that matters enumerated in Articles 73 and 74 are concerned,

15 transfer of land, natural resources and means of production to public ownership or other forms of collective enterprise for the public benefit

16 prevention of the abuse of economic power,

17 promotion of agricultural production and forestry, securing the supply of food, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing, and preservation of the coasts

18 real estate transactions, land law (excluding the law of charges for development) and matters concerning agricultural leases, as well as housing, settlement and homestead matters,

19 measures against human and animal diseases that are communicable or otherwise endanger public health, admission to the medical profession and to other medical occupations or practices, as well as trade in medicines, curatives, narcotics and poisons,

19a the economic viability of hospitals and the regulation of hospitalization fees,

20 protection regarding the marketing of food, drink and tobacco, of necessities of life, fodder, agricultural and forest seeds and seedlings, and protection of plants against diseases and pests, as well as the protection of animals;

21 ocean and coastal shipping, as well as sea marks, inland navigation, meteorological services, sea routes, and inland waterways used for general traffic,

22 road traffic, motor transport, construction and maintenance of long-distance highways, as well as the collection of charges for the use of public highways by vehicles and the allocation of revenue therefrom

23 railroads which are not railroads of the Federation, except mountain railroads,

24 { },

25 State liability,

26 artificial insemination of humans, research on manipulations of genes, and regulations for transplantation of organs and living matter

(2) The consent of the Senate is necessary for statutes according to Paragraph (1) number 25

#### **74a Concurrent Legislative Power of the Federation**

(1) Concurrent legislative power further extend to the remuneration and pensions of members of the public service whose service and loyalty are governed by public law, insofar as the Federation does not have exclusive power to legislate pursuant to Article 73 number 8

(2) Federal statutes enacted pursuant to paragraph (1) require the consent of the Senate

(3) Federal statutes enacted pursuant to Article 73 number 8 likewise require the consent of the Senate, insofar as for the structure and assessment of remuneration and pensions, including the rating of posts, provision is made for criteria or minimum or maximum rates other than those provided for in Federal statutes enacted pursuant to paragraph (1)

(4) Paragraphs (1) and (2) apply *mutatis mutandis* to the remuneration and pensions of Judges in the States Paragraph (3) applies *mutatis mutandis* to statutes enacted pursuant to Article 98 (1)

#### **75. Power to pass Framework Legislation**

(1) Subject to the conditions laid down in Article 72, the Federation has the right to enact framework legislation for the legislation of the States concerning

1 the legal status of persons in the public service of the States, communes or other corporate bodies under public law, insofar as Article 74a does not provide otherwise,

1a the general principles governing higher education,

2 the general legal status of the press,

3 hunting, nature conservation and landscape management,

4 State distribution, regional planning and the management of water resources,

5 matters relating to the registration of residence or domicile and to identity cards,

6 protection against transfer of items of German culture to foreign countries Article 72 (3) applies *mutatis mutandis*

(2) Framework legislation may contain detailed or directly applicable provisions only in exceptional cases

(3) If the Federation adopts framework legislation, the States are bound to adopt the necessary State statutes within an adequate time frame stipulated by the legislation

**76. Bills**

(1) Bills are introduced in the House of Representatives by the Government or by members of the House of Representatives or by the Senate

(2) Bills of the Government first have to be submitted to the Senate. The Senate is entitled to state its position on such Bills within six weeks. If, for important reasons and particularly with regard to the volume of the Bill, the Senate asks for deferral, the period is nine weeks. A Bill which, on submission to the Senate, is exceptionally specified by the Government to be particularly urgent may be submitted by the latter to the House of Representatives three weeks later, or, if the Senate asked for deferral according to sentence 3, six weeks later, even though the Government may not yet have received the statement of the Senate's position, upon receipt, such statement has to be transmitted to the House of Representatives by the Government without delay. The time limit for statements to Bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks, sentence 4 is not applied.

(3) Bills of the Senate have to be submitted to the House of Representatives by the Government within six weeks. In doing so, the Government states its own view. If, for important reasons and particularly with regard to the volume of the Bill, the Government asks for deferral, the period is nine weeks. The time limit for a Bill which is exceptionally specified by the Senate to be particularly urgent is three weeks or, if the Government asked for deferral according to sentence 3, six weeks. The time limit for statements to Bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks, sentence 4 is not applied. The House of Representatives has to debate about bills within adequate time and reach a decision.

**77. Legislative Procedure**

(1) Federal statutes are enacted by the House of Representatives. Upon their adoption they have to be transmitted, without delay, to the Senate by the President of the House of Representatives.

(2) The Senate may, within three weeks of the receipt of the adopted Bill, demand that a Committee for Joint Consideration of Bills, composed of members of the House of Representatives and members of the Senate, be convened. The composition and the procedure of this Committee is regulated by rules of procedure to be adopted by the House of Representatives and requiring the consent of the Senate. The members of the Senate on this Committee are not bound by instructions. Where the consent of the Senate is required for a Bill to become a statute, the House of Representatives and the Government may also demand that the Committee be convened. Should the Committee propose any amendment to the adopted Bill, the House of Representatives again votes on the Bill.

(2a) Insofar as a statute requires the consent of the Senate, the Senate, if no demand according to paragraph (2) 1 was issued or if the committee for joint consideration has concluded its procedures without suggesting changes, has to debate about its consent within adequate time and reach a decision.



(2) The consent of the Senate is required, unless otherwise provided by Federal legislation, for Ordinances of the Government or a Minister concerning basic rules or charges for the use of facilities of postal affairs and telecommunication, concerning the basic rules for charges and use of facilities of railroads of the Federation, or concerning the construction and operation of railroads, as well as for ordinances issued pursuant to Federal statutes that require the consent of the Senate or that are executed by the States as agents of the Federation or as matters of their own concern

(3) The Senate can submit such Bills for Ordinances to the Government that require its consent

(4) Insofar as, by or on the basis of Federal statutes, Governments of the States are empowered to adopt Ordinances, the States are also allowed to regulate the matter by statute

#### **80a. Application of Legal Provisions in a State of Tension**

(1) Where this Constitution or a Federal statute on defence, including the protection of the civilian population, stipulates that legal provisions may only be applied in accordance with this Article, their application is, except in a State of defence, admissible only after the House of Representatives has determined that a State of tension exists or where it has specifically approved such application. In respect of the cases mentioned in Article 12a (5) 1 and (6) 2, such determination of a State of tension and such specific approval requires a two-thirds majority of the votes cast

(2) Any measures taken by virtue of legal provisions enacted under paragraph (1) have to be revoked whenever the House of Representatives so demands

(3) In derogation of paragraph (1), the application of such legal provisions is also admissible by virtue of and in accordance with a decision taken with the consent of the Government by an international body within the framework of a treaty of alliance. Any measures taken pursuant to this paragraph have to be revoked whenever the House of Representatives so demands with the majority of its members

#### **81. State of Legislative Emergency**

(1) Should, in the circumstances of Article 68, the House of Representatives not be dissolved, the President may, at the request of the Government and with the consent of the Senate, declare a State of legislative emergency with respect to a Bill, where the House of Representatives rejects the Bill although the Government has declared it to be urgent. The same applies where a Bill has been rejected although the Chancellor had combined with it the motion under Article 68

(2) Where, after a State of legislative emergency has been declared, the House of Representatives again rejects the Bill or adopts it in a version stated to be unacceptable to the Government, the Bill is deemed to have become a statute to the extent that the Senate consents to it. The same applies where the Bill is not passed by the House of Representatives within four weeks of its reintroduction

(3) During the term of office of a Chancellor, any other Bill rejected by the House of Representatives may become a statute in accordance with paragraphs (1) and (2) within a period of six months after the first declaration of a State of legislative emergency. After the expiration of this period a further declaration of a State of legislative emergency is inadmissible during the term of office of the same Chancellor.

(4) This Constitution may not be amended nor repealed nor suspended in whole or in part by a statute enacted pursuant to paragraph (2).

## 82. Promulgation and Effective Date of Legal Provisions

(1) Statutes enacted in accordance with the provisions of this Constitution are, after countersignature, signed by the President and promulgated in the Federal Law Gazette. Ordinances are signed by the agency which issues them and, unless otherwise provided by statute, are promulgated in the Federal Law Gazette.

(2) Every statute or every Ordinance should specify its effective date. In the absence of such a provision, it takes effect on the fourteenth day after the end of the day on which the Federal Law Gazette containing it was published.

## CHAPTER VIII

### EXECUTION OF STATUTES AND FEDERAL ADMINISTRATION

## 83. Competencies of Federation and States

The States execute Federal statutes as matters of their own concern insofar as this Constitution does not otherwise provide or permit.

## 84. State Execution and Government Supervision

(1) Where the States execute Federal statutes as matters of their own concern, they provide for the establishment of the requisite authorities and the regulation of administrative procedures insofar as Federal statutes consented to by the Senate do not otherwise provide.

(2) The Government may, with the consent of the Senate, issue general administrative rules.

(3) The Government exercises supervision to ensure that the States execute the Federal statutes in accordance with applicable law. For this purpose the Government may send commissioners to the highest State authorities and, with their consent or, where such consent is refused, with the consent of the Senate, also to subordinate authorities.

(4) Should any shortcomings which the Government has found to exist in the execution of Federal statutes in the States not be corrected, the Senate decides, at the request of the Government or the State concerned whether such State has violated the law. The decision of the Senate may be challenged in the Federal Constitutional Court.

(5) With a view to the execution of Federal statutes, the Government may be authorized by a Federal statute requiring the consent of the Senate to issue

individual instructions for particular cases. They are addressed to the highest State authorities unless the Government considers the matter urgent.

#### 85. Execution by the States as Agents of the Federation

(1) Where the States execute Federal statutes as agents of the Federation, the establishment of the requisite authorities remains the concern of the States, except insofar as Federal statutes consented to by the Senate otherwise provide.

(2) The Government may, with the consent of the Senate, issue general administrative rules. It may regulate the uniform training of civil servants and other salaried public employees. The heads of authorities at the intermediate level are appointed with its agreement.

(3) The State authorities are subject to the instructions of the competent highest Federal authorities. Such instructions are addressed to the highest State authorities unless the Government considers the matter urgent. Execution of the instructions is ensured by the highest State authorities.

(4) Federal supervision covers the lawfulness and appropriateness of execution. The Government may, for this purpose, require the submission of reports and documents and send commissioners to all authorities.

#### 86. Direct Federal Administration

Where the Federation executes statutes by means of direct Federal Administration or by Federal corporate bodies or institutions under public law, the Government issues, insofar as the statute concerned contains no special provision, pertinent general administrative rules. The Government provides for the establishment of the requisite authorities insofar as the statute concerned does not otherwise provide.

#### 87. Matters for Direct Federal Administration

(1) The foreign service, the Federal finance administration and, in accordance with the provisions of Article 89, the administration of Federal waterways and of shipping is conducted as matters of direct Federal administration with their own administrative substructures. Federal legislation may be enacted to establish Federal Border Guard authorities and central offices for police information and communications, for the criminal police and for the compilation of data for the purposes of protection of the constitution and of protection against activities on Federal territory which, through the use of force or acts preparatory to the use of force, endanger the foreign interests of the Federal Republic of Germany.

(2) Social insurance institutions whose sphere of competence extends beyond the territory of one State are administered as direct Federal corporate bodies under public law. Social insurance institutions whose sphere of competence extends beyond the territory of one State, but not beyond that of more than three States, are administered, differing from the first sentence, as direct State corporate bodies under public law if the supervising State is determined by the States involved.

(3) In addition, independent Federal higher authorities as well as new Federal corporate bodies and institutions under public law may be established by Federal legislation for matters on which the Federation has the power to legislate. Where new functions arise for the Federation in matters on which it has the power to legislate, Federal authorities at the intermediate and lower levels may be established, in case of urgent need, with the consent of the Senate and of the majority of the members of the House of Representatives.

#### **87a Establishment and Powers of the Armed Forces**

(1) The Federation establishes Armed Forces for defence purposes. Their numerical strength and general organizational structure must be shown in the budget.

(2) Apart from defence, the Armed Forces may only be used insofar as explicitly permitted by this Constitution.

(3) While a State of defence or a State of tension exists, the Armed Forces have the power to protect civilian property and discharge functions of traffic control insofar as this is necessary for the performance of their defence mission. Moreover, the Armed Forces may, when a State of defence or a State of tension exists, be entrusted with the protection of civilian property also in support of police measures, in this event the Armed Forces cooperate with the competent authorities.

(4) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a State, the Government may, should conditions as envisaged in Article 91 (2) obtain and the police forces and the Federal Border Guard be inadequate, use the Armed Forces to support the police and the Federal Border Guard in the protection of civilian property and in combatting organized and militarily armed insurgents. Any such use of the Armed Forces has to stop whenever the House of Representatives or the Senate so demands.

#### **87b Administration of the Federal Armed Forces**

(1) The Federal Armed Forces administration is conducted as a direct Federal administration with its own administrative substructure. Its functions are to administer personnel matters and directly to meet the material requirements of the Armed Forces. Tasks connected with benefits to disabled persons or with construction work are not assigned to the Federal Armed Forces administration except by Federal legislation requiring the consent of the Senate. Such consent is also required for any statutes to the extent that they empower the Federal Armed Forces administration to interfere with rights of third parties, this does not apply, however, in the case of statutes concerning personnel matters.

(2) Moreover, Federal statutes concerning defence, including recruitment for military service and protection of the civilian population, may, with the consent of the Senate, provide that they are executed, wholly or in part, either by means of direct Federal administration having its own administrative substructure or by the States acting as agents of the Federation.

Where such statutes are executed by the States acting as agents of the Federation, they may, with the consent of the Senate, provide that the powers vested in the Government or appropriate highest Federal authorities by virtue of Article 85 are transferred wholly or in part to higher Federal authorities; in such an event it may be enacted that these authorities do not require the consent of the Senate in issuing general administrative rules as referred to in Article 85 (2) 1

#### 87c. Administration in the Field of Nuclear Energy

Statutes enacted under Article 74 number 11a may, with the consent of the Senate, provide that they are executed by the States acting as agents of the Federation

#### 87d. Aviation Administration

(1) Aviation administration is conducted as a direct Federal administration. Federal law decides about public law and private law forms of organization.

(2) Through Federal legislation requiring the consent of the Senate functions of aviation administration may be transferred to the States acting as agents of the Federation

#### 87e. Railroads

(1) The administration for traffic of railroads of the Federation is conducted as a direct Federal administration. By Federal statute, tasks of the administration for traffic of railroads can be delegated to the States as their own tasks

(2) The Federation undertakes the tasks to administer traffic of railroads of the Federation as are assigned to it by Federal statute

(3) Railroads of the Federation are managed in the form of private law businesses. They are owned by the Federation as far as the activities of the business encompass construction, maintenance, or operation of railways. The sale of shares of the Federation in the businesses mentioned in the second sentence is regulated on the basis of a statute, the Federation retains a majority of shares in those businesses. Details are regulated by a Federal statute

(4) The Federation guarantees that the public weal, particularly the interest in traffic, in the development and preservation of the railway network of railways of the Federation as far as it is used for local railway transport of persons is considered. Details are regulated by a Federal statute

(5) Statutes based on paragraphs (1) to (4) need the consent of the Senate. Furthermore, the consent of the Senate is necessary for statutes that dissolve, merge, or split railroads of the Federation, convey railways of railroads of the Federation to third parties as well as discontinue railways of railroads of the Federation, or affect the local railway transport of persons

#### 87f. Postal Affairs and Telecommunication

(1) Regulated by a Federal statute requiring the consent of the Senate,

the Federation guarantees a comprehensive and adequate coverage with services in the area of postal affairs and telecommunication

(2) Services in the sense of paragraph (1) are organized as private law activities by those businesses originating in the special property Deutsche Bundespost. Sovereign tasks in the area of postal affairs and telecommunication are organized as direct Federal administration.

(3) Notwithstanding paragraph (2) 2, the Federation, in the public law form of a direct Federal agency, discharges certain duties regarding businesses originating in the special property Deutsche Bundespost, as are assigned to it by Federal statutes

#### **88. Bundesbank**

The Federation establishes a note-issuing and currency bank as the Bundesbank. Its tasks and powers can, in the context of the European Union, be transferred to the European Central Bank which is independent and primarily bound by the purpose of securing stability of prices

#### **89. Federal Waterways**

(1) The Federation is the owner of the former Reich waterways

(2) The Federation administers the Federal waterways through its own authorities. It exercises those governmental functions relating to inland shipping which extend beyond the territory of one State, and those governmental functions relating to maritime shipping which are conferred on it by statute. Upon request, the Federation may transfer the administration of Federal waterways, insofar as they lie within the territory of one State, to that State as its agent. Where a waterway touches the territories of several States, the Federation may delegate one State to be its agent where so requested by the States concerned.

(3) In the administration, development, and new construction of waterways, the needs of land improvement and of water economy are safeguarded in agreement with the States

#### **90. Federal Highways**

(1) The Federation is the owner of the former Reich streets and Reich highways

(2) The States, or such self-governing corporate bodies as are competent under State law, administer as agents of the Federation the Federal streets and other Federal highways used for long-distance traffic.

(3) At the request of a State, the Federation may place Federal streets and other Federal highways used for long-distance traffic under direct Federal administration insofar as they lie within the territory of that State.

#### **91. Internal Emergency**

(1) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a State, a State may request the services of the police forces of other States, or of the forces and facilities of other administrative authorities and of the Federal Border Guard

(2) If the State where such danger is imminent is not itself willing or able to combat the danger, the Government may place the police in that State and the police forces of other States under its own instructions and use units of the Federal Border Guard. The order for this has to be revoked after the removal of the danger or else at any time at the demand of the Senate. Where the danger extends to a region larger than a State, the Government may, insofar as is necessary for effectively combatting such danger, issue instructions to the State Governments, the first and second sentences of this paragraph are not affected by this provision.

## CHAPTER VIII

### JOINT TASKS

#### 91a. Participation of the Federation

(1) The Federation participates, in the following sectors, in the discharge of responsibilities of the States, provided that such responsibilities are important to society as a whole and that Federal participation is necessary for the improvement of living conditions (joint tasks)

1 extension and construction of institutions of higher education, including university clinics,

2 improvement of regional economic structures,

3 improvement of the agrarian structure and of coast preservation

(2) Joint tasks are defined in detail by a Federal statute requiring the consent of the Senate. Such legislation should include general principles governing the discharge of joint tasks.

(3) Such legislation provides for the procedure and the institutions required for joint overall planning. The inclusion of a project in the overall planning requires the consent of the State in which it is to be carried out.

(4) In cases to which paragraph (1) number 1 and 2 applies, the Federation pays for one-half of the expenditure in each State. In cases to which paragraph (1) number 3 applies, the Federation pays for at least one-half of the expenditure, and such proportion is the same for all the States. Details are regulated by statute. Provision of funds are subject to appropriation in the budgets of the Federation and the States.

(5) The Government and the Senate are informed about the execution of joint tasks, should they so demand.

#### 91b. Cooperation of Federation and States

The Federation and the States may, pursuant to agreements, cooperate in educational planning and in the promotion of institutions and projects of scientific research of supra-regional importance. The apportionment of costs is regulated in the relevant agreements.

## **CHAPTER IX**

### **THE ADMINISTRATION OF JUSTICE**

#### **92. Court Organization**

Judicial power is vested in the Judges, it is exercised by the Federal Constitutional Court, by the Federal courts provided for in this Constitution, and by the courts of the States

#### **93. Federal Constitutional Court**

##### **(1) The Federal Constitutional Court decides**

1 on the interpretation of this Constitution in the event of disputes concerning the extent of the rights and duties of a highest Federal body or of other parties concerned who have been vested with rights of their own by this Constitution or by rules of procedure of a highest Federal body,

2 in case of differences of opinion or doubts on the formal and material compatibility of Federal law or State law with this Constitution, or on the compatibility of State law with other Federal law, at the request of the Government, of a State Government, or of one-third of the House of Representatives members,

2a in case of differences of opinion on the compatibility of Federal law with Article 72 (2), at the request of the Senate, of a State Government, or of a State Parliament,

3 in case of differences of opinion on the rights and duties of the Federation and the States, particularly in the execution of Federal law by the States and in the exercise of Federal supervision,

4 on other disputes involving public law, between the Federation and the States, between different States or within a State, unless recourse to another court exists,

4a on complaints of unconstitutionality, being filed by any person claiming that one of his basic rights or one of his rights under Article 20 (4) or under Article 33, 38, 101, 103 or 104 has been violated by public authority,

4b on complaints of unconstitutionality filed by communes or associations of communes on the ground that their right to self-government under Article 28 has been violated by a statute other than a State statute open to complaint to the respective State constitutional court,

5 in the other cases provided for in this Constitution

(2) The Federal Constitutional Court also acts in such other cases as are assigned to it by Federal legislation

#### **94. Composition of the Federal Constitutional Court**

(1) The Federal Constitutional Court consists of Federal Judges and other members Half of the members of the Federal Constitutional Court are

elected by the House of Representatives and half by the Senate. They may not be members of the House of Representatives, the Senate, the Government, nor of any of the corresponding bodies of a State.

(2) The constitution and procedure of the Federal Constitutional Court are regulated by a Federal statute which specifies in what cases its decisions have the force of law. Such statute may require that all other legal remedies must have been exhausted before a complaint of unconstitutionality can be entered, and may make provision for a special procedure as to admissibility.

#### **95. Highest Courts of Justice of the Federation, Joint Panel**

(1) For the purposes of ordinary, administrative, fiscal, labour, and social jurisdiction, the Federation establishes as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court, and the Federal Social Court.

(2) The Judges of each of these Courts are selected jointly by the competent Minister and a committee for the selection of Judges consisting of the competent State Ministers and an equal number of members elected by the House of Representatives.

(3) In order to preserve uniformity of decisions, a Joint Panel of the courts specified in paragraph (1) is set up. Details are regulated by a Federal statute.

#### **96. Other Federal Courts**

(1) The Federation may establish a Federal court for matters concerning industrial property rights.

(2) The Federation may establish military criminal courts for the Armed Forces as Federal courts. They may only exercise criminal jurisdiction while a State of defence exists, and otherwise only over members of the Armed Forces serving abroad or on board warships. Details are regulated by a Federal statute. These courts are within the competence of the Minister of Justice. Their full-time Judges are persons qualified to hold judicial office.

(3) The highest court of justice for appeals from the courts mentioned in paragraphs (1) and (2) is the Federal Court of Justice.

(4) The Federation may establish Federal courts for disciplinary proceedings against, and for proceedings in pursuance of complaints by, persons in the Federal Public Service.

(5) In respect of criminal proceedings under Article 26 (1) or involving the protection of the State, a Federal statute requiring the consent of the Senate may provide that State courts exercise Federal jurisdiction.

96a. {...}

#### **97. Independence of the Judges**

(1) The Judges are independent and subject only to the law.

(2) Judges appointed permanently on a full-time basis in established positions cannot, against their will, be dismissed or permanently or temporarily suspended from office or given a different posting or retired.

before the expiration of their term of office except by virtue of a judicial decision and only on the grounds and in the form provided for by statute. Legislation may set age limits for the retirement of Judges appointed for life. In the event of changes in the structure of courts or in their districts, Judges may be transferred to another court or removed from office, provided they retain their full salary.

#### **98. Legal status of Judges in the Federation and the States**

(1) The legal status of the Federal Judges is regulated by a special Federal statute.

(2) Where a Federal Judge, in his official capacity or unofficially, infringes the principles of this Constitution or the constitutional order of a State, the Federal Constitutional Court may decide by a two-thirds majority, upon the request of the House of Representatives, that the Judge be given a different office or retired. In a case of intentional infringement, his dismissal may be ordered.

(3) The legal status of the Judges in the States is regulated by special State statutes. The Federation may enact outline provisions, insofar as Article 74a (4) does not provide otherwise.

(4) The States may provide that the State Minister of Justice together with a committee for the selection of Judges decides on the appointment of Judges in the States.

(5) The States may, in respect of State Judges, enact provisions corresponding to those of paragraph (1).

(2) Existing State constitutional law remains unaffected. The decision in a case of impeachment of a Judge rests with the Federal Constitutional Court.

#### **99. Disputes Concerning State Law**

The decision on constitutional disputes within a State may be assigned by State legislation to the Federal Constitutional Court, and the decision at last instance in matters involving the application of State law to the highest courts of justice referred to in Article 95 (1).

#### **100. Compatibility of Statutory Law with the Constitution**

(1) Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, the proceedings have to be stayed, and a decision has to be obtained from the State court with jurisdiction over constitutional disputes where the constitution of a State is held to be violated, or from the Federal Constitutional Court where this Constitution is held to be violated. This also applies where this Constitution is held to be violated by State law or where a State statute is held to be incompatible with a Federal statute.

(2) Where, in the course of litigation, doubt exists whether a rule of public international law is an integral part of Federal law and whether such rule directly creates rights and duties for the individual (Article 25), the court obtains a decision from the Federal Constitutional Court.

(3) Where the Constitutional Court of a State, in interpreting this Constitution, intends to deviate from a decision of the Federal Constitutional Court or of the Constitutional Court of another State, it obtains a decision from the Federal Constitutional Court

#### **101. Ban on extraordinary courts**

(1) Extraordinary courts are inadmissible. No one may be removed from the jurisdiction of his lawful Judge

(2) Courts for special fields of law may be established only by Legislation

#### **102. Abolishment of capital punishment**

Capital punishment is abolished

#### **103. Due Process**

(1) In the courts, everyone is entitled to a hearing in accordance with the law

(2) An act can be punished only where it constituted a criminal offence under the law before the act was committed

(3) No one may be punished for the same act more than once under general criminal legislation

#### **104. Legal Guarantees in the Event of Deprivation of liberty**

(1) The liberty of the individual may be restricted only by virtue of a formal statute and only in compliance with the forms prescribed therein. Detained persons may not be subjected to mental or to physical ill-treatment

(2) Only Judges may decide on the admissibility or continuation of any deprivation of liberty. Where such deprivation is not based on the order of a Judge, a judicial decision has to be obtained without delay. The police may hold no one on their own authority in their own custody longer than the end of the day after the day of apprehension. Details are regulated by legislation

(3) Any person provisionally detained on suspicion of having committed an offence has to be brought, not later than the day following the day of apprehension, before a Judge who has to inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. The Judge, without delay, has to either issue a warrant of arrest setting forth the reasons therefor or order his release from detention

(4) A relative or a person enjoying the confidence of the person detained has to be notified without delay of any judicial decision imposing or ordering the continuation of his deprivation of liberty

### **CHAPTER X FINANCE**

#### **104a. Apportionment of Expenditure**

(1) The Federation and the States separately meet the expenditure resulting from the discharge of their respective tasks insofar as this Constitution does not provide otherwise

(2) Where the States act as agents of the Federation, the Federation meets the resulting expenditure

(3) Federal statutes to be executed by the States and granting money payments may make provision for such payments to be met wholly or in part by the Federation Where any such statute provides that the Federation meets one-half of the expenditure or more, it is implemented by the States as agents of the Federation Where any such statute provides that the States meet one-quarter of the expenditure or more, it requires the consent of the Senate

(4) The Federation may grant the States financial assistance for particularly important investments by the States or communes or associations of communes, provided that such investments are necessary to avert a disturbance of the overall economic equilibrium or to equalize differences of economic capacities within the Federal territory or to promote economic growth Details, especially concerning the kinds of investments to be promoted, are regulated by a Federal statute requiring the consent of the Senate or by administrative arrangements under the Federal budget law

(5) The Federation and the States meet the administrative expenditure incurred by their respective authorities and are responsible to each other for ensuring proper administration Details are regulated by a Federal statute requiring the consent of the Senate

### **105. Legislative Powers**

(1) The Federation has exclusive power to legislate on customs duties and fiscal monopolies

(2) The Federation has concurrent power to legislate on all other taxes the revenue from which accrues to it wholly or in part or where the conditions provided for in Article 72 (2) apply

(2a) The States have power to legislate on local excise taxes as long and insofar as they are not identical with taxes imposed by Federal legislation

(3) Federal laws relating to taxes the receipts from which accrue wholly or in part to the States or communes or associations of communes require the consent of the Senate

### **106 Apportionment of Tax Revenue**

(1) The yield of fiscal monopolies and the revenue from the following taxes belongs to the Federation

1 customs duties,

2 excise taxes insofar as they do not accrue to the States pursuant to paragraph (2), or jointly to the Federation and the States in accordance with paragraph (3), or to the communes in accordance with paragraph (6),

3 road freight tax,

4 capital transaction taxes, the insurance tax, and the bill of exchange tax,

5 non-recurrent levies on property, and contributions imposed for the purpose of implementing the equalization of burdens legislation,

6 income and corporation surtaxes,  
7 charges imposed within the framework of the European Communities

(2) Revenue from the following taxes belong to the States

- 1 wealth tax,
- 2 inheritance tax,
- 3 motor vehicle tax,
- 4 such taxes on transactions as do not accrue to the Federation pursuant to paragraph (1) or jointly to the Federation and the States pursuant to paragraph (3),
- 5 beer tax,
- 6 gaming casinos levy

(3) Revenue from income taxes, corporation taxes, and turnover taxes belong jointly to the Federation and the States (joint taxes) to the extent that the revenue from the income tax is not allocated to the communes pursuant to paragraph (5). The Federation and the States equally share the revenues from income taxes and corporation taxes. The respective shares of the Federation and the States in the revenue from the turnover tax are determined by a Federal statute requiring the consent of the Senate.

Such determination is based on the following principles:

1 The Federation and the States have an equal claim to coverage from current revenues of their respective necessary expenditures. The extent of such expenditures is determined giving due consideration to financial planning for several years ahead.

2 The coverage requirements of the Federation and of the States are coordinated in such a way that a fair balance is struck, any overburdening of taxpayers precluded, and uniformity of living conditions in the Federal territory ensured. In addition, for the apportionment of the value added tax to Federation and States it will be taken into account that after 1 Jan 1996 the States' income tax revenues will be reduced due to child benefits. Details are regulated by a Federal statute according to sentence 3.

(4) The respective shares of the Federation and the States to the revenue from the turnover tax are newly apportioned whenever the relation of revenues to expenditures in the Federation develops substantially differently from that of the States, this does not apply to reduced tax revenues which are included into the calculation of the apportionment of value added tax according to paragraph (3) sentence 5. Where Federal legislation imposes additional expenditures on or withdraws revenue from the States, the additional burden may be compensated for by allocation of Federal grants under a Federal statute requiring the consent of the Senate, provided such additional burden is limited to a short period of time. Such statute lays down the principles for calculating such grants and distributing them among the States.

(5) A share of the revenue from the income tax belongs to the communes, to be passed on by the States to their communes on the basis of income taxes paid by the inhabitants of the latter. Details are regulated by a Federal statute requiring the consent of the Senate. Such statute may provide that communes assess the rate which is applicable to this communal share.

(6) Revenue from taxes on real estate and on local industry and trade belongs to the communes, revenue from local excise taxes belongs to the communes or, as may be provided for by State legislation, to associations of communes. Communes are authorized to assess, within the framework of the relevant statutes, the rates at which the taxes on real estate and on local industry and trade are levied locally. Where there are no communes in a State, revenue from taxes on real estate and on local industry and trade as well as from local excise taxes belongs to the State. The Federation and the States may participate, by virtue of an apportionment, in the revenue from the tax on local industry and trade. Details regarding such apportionment are regulated by a Federal statute requiring the consent of the Senate. In accordance with State legislation, taxes on real estate and on local industry and trade as well as the communes' share of revenue from the income tax may be taken as a basis for calculating the amount of apportionment.

(7) An overall percentage, to be determined by State legislation, of the State share of total revenue from joint taxes belongs to the communes or associations of communes. In all other respects State legislation determines whether and to what extent revenue from State taxes belong to communes or associations of communes.

(8) Where in individual States or communes or associations of communes the Federation causes special facilities to be provided which directly result in an increase of expenditure or a loss of revenue (special burden) to these States or communes or associations of communes, the Federation grants the necessary compensation where and insofar as such States or communes or associations of communes cannot reasonably be expected to bear such special burden. In granting such compensation, due account is being taken of third-party indemnities and financial benefits accruing to the States or communes or associations of communes concerned as a result of provision for such facilities.

(9) For the purpose of this Article, revenues and expenditures of communes or associations of communes are deemed to be State revenues and expenditures.

#### **106a Railroads**

Starting 1 Jan., 1996, the States can claim a sum out of Federal tax revenues for public local transport of persons. Details are regulated by Federal statute requiring the consent of the Senate. The sum mentioned in the first sentence is not included in the calculation of financial strength according to Article 107 (2).

**107. Financial Equalization**

(1) Revenue from State taxes and the State share of revenue from income and corporation taxes belongs to the individual States to the extent that such taxes are collected by revenue authorities within their respective territories (local revenue). A Federal statute requiring the consent of the Senate may provide in detail for the delimitation as well as the manner and scope of allotment of local revenue from corporation and wage taxes. Such statute may also provide for the delimitation and allotment of local revenue from other taxes. The State share of revenue from the turnover tax belongs to the individual States on a per capita basis, a Federal statute requiring the consent of the Senate may provide for supplementary shares not exceeding one quarter of a State share to be granted to States whose per capita revenue from State taxes and from the income and corporation taxes is below the average of all the States combined.

(2) It has to be ensured by statute, that a reasonable equalization between financially strong and financially weak States is achieved, due consideration being given to financial capacity and financial requirements of communes or associations of communes. Such statute has to specify the conditions governing equalization claims of States entitled to equalization payments and equalization liabilities of States owing equalization payments as well as the criteria for determining the amounts of equalization payments. Such statute may also provide for grants to be made by the Federation from Federal funds to financially weak States in order to complement the coverage of their general financial requirements (supplementary grants).

**108. Revenue Administration**

(1) Customs duties, fiscal monopolies, excise taxes subject to Federal legislation, including the import turnover tax, and charges imposed within the framework of the European Communities are administered by Federal revenue authorities. The organization of these authorities is regulated by Federal statute. The heads of authorities at the intermediate level are appointed in consultation with the respective State Governments.

(2) All other taxes are administered by State revenue authorities. The organization of these authorities and the uniform training of their civil servants may be regulated by a Federal statute requiring the consent of the Senate. The heads of authorities at the intermediate level are appointed in agreement with the Government.

(3) To the extent that taxes accruing wholly or in part to the Federation are administered by State revenue authorities, those authorities act as agents of the Federation. Article 85 (3) and (4) applies with the Minister of Finance being substituted for the Government.

(4) In respect of the administration of taxes, a Federal statute requiring the consent of the Senate may provide for collaboration between Federal and State revenue authorities, or in the case of taxes under paragraph (1) for their administration by State revenue authorities, or in the case of other taxes for their administration by Federal revenue authorities where and to the extent

that the execution of revenue statutes is substantially improved or facilitated thereby. As regards taxes the revenue from which accrues exclusively to communes or associations of communes, their administration may wholly or in part be transferred by the States from the appropriate State revenue authorities to communes or associations of communes.

(5) The procedure to be applied by Federal revenue authorities is laid down by Federal legislation. The procedure to be applied by State revenue authorities or, as envisaged in paragraph (4) 2, by communes or associations of communes may be laid down by a Federal statute requiring the consent of the Senate.

(6) The jurisdiction of revenue courts is uniformly regulated by Federal legislation.

(7) The Government may issue appropriate general administrative rules which, to the extent that administration is entrusted to State revenue authorities or communes or associations of communes, require the consent of the Senate.

### **109. Budget Management in the Federation and the States**

(1) The Federation and the States are autonomous and independent of each other in their budget management.

(2) The Federation and the States give due regard in their budget management to the requirements of overall economic equilibrium.

(3) Through Federal legislation requiring the consent of the Senate principles applicable to both the Federation and the States may be established governing budgetary law, responsiveness of budget management to economic trends, and financial planning to cover several years ahead.

(4) With a view to averting disturbances of the overall economic equilibrium, Federal legislation requiring the consent of the Senate may be enacted providing for

1 maximum amounts, terms and timing of loans to be raised by territorial entities or special purpose associations, and

2 an obligation on the part of the Federation and the States to maintain interest-free deposits at the Bundesbank (reserves for counterbalancing economic trends). Authorizations to issue the relevant ordinances may be conferred on the Government only. Such ordinances require the consent of the Senate. They have to be repealed insofar as the House of Representatives so demands, details are regulated by Federal legislation.

### **110. Budget and Budget Law of the Federation**

(1) All revenues and expenditures of the Federation are included in the budget, in respect of Federal enterprises and special assets, only allocations thereto or remittances therefrom need be included. The budget has to be balanced as regards revenue and expenditure.

(2) The budget is laid down in a statute covering one year or several fiscal years separately before the beginning of the first of those fiscal years.

Provision may be made for parts of the budget to apply to periods of different duration, but divided into fiscal years

(3) Bills within the meaning of paragraph (2) 1 as well as Bills to amend the budget statute and the budget are submitted simultaneously to the Senate and to the House of Representatives, the Senate is entitled to State its position on such Bills within six weeks or in the case of amending Bills, within three weeks

(4) The budget statute may contain only such provisions as apply to revenues and expenditures of the Federation and to the period for which the budget statute is being enacted. The budget statute may stipulate that these provisions cease to apply only upon the promulgation of the next budget statute or, in the event of an authorization pursuant to Article 115, at a later date

#### **111a. Interim Budget Management**

(1) Where, by the end of a fiscal year, the budget for the following year has not been laid down by statute, the Government may, until such statute comes into force, make all payments which are necessary

(a) to maintain statutory institutions and to carry out measures authorized by statute,

(b) to meet the Federation's legal obligations,

(c) to continue building projects, procurements, and other services, or to continue to grant subsidies for these purposes, provided that amounts have already been appropriated in the budget of a previous year

(2) To the extent that revenues provided by specific legislation and derived from taxes or duties or any other sources, or the working capital reserves, do not cover the expenditures referred to in paragraph (1), the Government may borrow the funds necessary for the conduct of current operations up to a maximum of one quarter of the total amount of the previous budget

#### **112. Expenditures in Excess of Budgetary Estimates**

Expenditures in excess of budgetary appropriations and extra budgetary expenditures require the consent of the Minister of Finance. Such consent may be given only in the case of an unforeseen and compelling necessity. Details may be regulated by Federal legislation

#### **113. Consent to Change Expenditures / Revenues**

(1) Statutes increasing the budget expenditures proposed by the Government or involving or likely in future to cause new expenditures requires the consent of the Government. This also applies to statutes involving or likely in future to cause decreases in revenue. The Government may demand that the House of Representatives postpone its vote on such Bills. In this case the Government states its position to the House of Representatives within six weeks

(2) Within four weeks after the House of Representatives has adopted such a Bill, the Government may demand that it votes on that Bill again

(3) Where the Bill has become a statute pursuant to Article 78, the Government may withhold its consent only within six weeks and only after having initiated the procedure provided for paragraph (1) 3 and 4 or in paragraph (2). Upon the expiry of this period such consent is deemed to have been given

#### **114. Rendering and Auditing of Accounts**

(1) The Minister of Finance on behalf of the Government has to submit annually to the House of Representatives and to the Senate for their approval an account, covering the preceding fiscal year, of all revenues and expenditures as well as of property and debt

(2) The Federal Audit Office, the members of which enjoy judicial independence, audits the account and examines the management of the budget and the conduct of business as to economy and correctness. The Federal Audit Office submits an annual report directly to the Government as well as to the House of Representatives and to the Senate. In all other respects the powers of the Federal Audit Office are regulated by Federal legislation.

#### **115. Procurement of Credit**

(1) The borrowing of funds and the assumption of pledges, guarantees or other commitments, as a result of which expenditure may be incurred in future fiscal years, requires Federal legislative authorization indicating or permitting computation of, the maximum amounts involved. Revenue obtained by borrowing may not exceed the total of expenditures for investments provided for in the budget, exceptions are permissible only to avert a disturbance of the overall economic equilibrium. Details are regulated by Federal legislation

(2) In respect of special assets of the Federation, exceptions to the provisions of paragraph (1) may be authorized by Federal legislation

### **CHAPTER XA STATE OF DEFENCE**

#### **115a. Concept and Determination of a State of Defence**

(1) The determination that Federal territory is being attacked by armed force or that such an attack is directly imminent (state of defence) are made by the House of Representatives with the consent of the Senate. Such determination are made at the request of the Government and require a two-thirds majority of the votes cast, which include at least the majority of the members of the House of Representatives

(2) Where the situation imperatively calls for immediate action and where insurmountable obstacles prevent the timely assembly of the House of Representatives, or where there is no quorum in the House of Representatives, the Joint Committee makes this determination with a two-

thirds majority of the votes cast, which includes at least the majority of its members

(3) The determination is promulgated in the Federal Law Gazette by the President pursuant to Article 82. Where this cannot be done in time, the promulgation is effected in another manner, subsequently, it has to be printed in the Federal Law Gazette as soon as circumstances permit

(4) Where the Federal territory is being attacked by armed force and where the competent bodies of the Federation are not in a position at once to make the determination provided for in paragraph (1) 1, such determination is deemed to have been made and promulgated at the time the attack began. The President announces such time as soon as circumstances permit

(5) Where the determination of the existence of a State of defence has been promulgated and where the Federal territory is being attacked by armed force, the President may, with the consent of the House of Representatives, issue declarations under international law regarding the existence of such State of defence. Where the conditions mentioned in paragraph (2) apply, the Joint Committee acts in substitution for the House of Representatives

#### 115b. Transfer of Command to the Chancellor

Upon the promulgation of a State of defence, the power of command over the Armed Forces passes to the Chancellor

#### 115c. Extension of Legislative Powers of the Federation

(1) The Federation has the right to legislate concurrently in respect of a State of defence even on matters within the legislative powers of the States. Such statutes require the consent of the Senate

(2) Federal legislation to be applicable upon the occurrence of a State of defence to the extent required by conditions obtaining while such State of defence exists may make

1 preliminary provision for compensation to be made in the event of property being taken, in derogation of Article 14 (3) 2,

2 provision for a time-limit other than that referred to in Article 104 (2) 3 and (3) 1 in respect of deprivations of liberty, but not exceeding four days at the most, in a case where no Judge has been able to act within the time limit applying in normal times

(3) Federal legislation to be applicable upon the occurrence of a State of defence to the extent required for averting an existing or directly imminent attack may, subject to the consent of the Senate, regulate the administration and the financial system of the Federation and the States in derogation of Sections VIII, VIIIA and X, provided that the viability of the States, communes and associations of communes is safeguarded, particularly in financial matters

(4) Federal statutes enacted pursuant to paragraph (1) or sub-paragraph 1 of paragraph (2) may, for the purpose of preparing for their enforcement, be applied even prior to the occurrence of a State of defence

**115d. Legislative Process in the case of Urgent Bills**

(1) While a State of defence exists, the provisions of Paragraphs (2) and (3) apply in respect of Federal legislation, in derogation of the provisions of Articles 76 (2), 77 (1) 2 and (2) to (4), 78, and 82 (1)

(2) Bills submitted as urgent by the Government are forwarded to the Senate at the same time as they are submitted to the House of Representatives. The House of Representatives and the Senate debate such bills together without delay. Insofar as the consent of the Senate is necessary, the majority of its votes is required for any such Bill to become a statute. Details are regulated by rules of procedure adopted by the House of Representatives and requiring the consent of the Senate.

(3) Article 115a (3) 2 applies *mutatis mutandis* in respect of the promulgation of such statutes.

**115e. Powers of the Joint Committee**

(1) Where, in a State of defence, the Joint Committee determines with a two-thirds majority of the votes cast, which includes at least the majority of its members, that insurmountable obstacles prevent the timely assembly of the House of Representatives or that there is no quorum in the House of Representatives, the Joint Committee has the status of both the House of Representatives and the Senate and exercises their rights as one body.

(2) The Joint Committee may not enact any statute to amend this Constitution or to deprive it of effect or application either in whole or in part. The Joint Committee is not authorized to enact statutes pursuant to Articles 23 (1) 2, 24 (1), or 29.

**115f. Powers of the Government**

(1) In a State of defence, the Government may, to the extent necessitated by circumstances

1 use the Federal Border Guard throughout the Federal territory,

2 issue instructions not only to Federal administrative authorities but also to State Governments and, where it deems the matter urgent, to State authorities, and may delegate this power to members of State Governments to be designated by it.

(2) The House of Representatives, the Senate and the Joint Committee is informed without delay of the measures taken in accordance with paragraph (1).

**115g. Status and Functions of the Federal Constitutional Court**

The constitutional status and the performance of the constitutional functions of the Federal Constitutional Court and its Judges may not be impaired. The Federal Constitutional Court Act may not be amended by a statute enacted by the Joint Committee except insofar as such amendment is required, also in the opinion of the Federal Constitutional Court, to maintain the capability of the Court to function. Pending the enactment of such a statute, the Federal Constitutional Court may take such measures as are

necessary to maintain the capability of the Court to carry out its work. Any decisions by the Federal Constitutional Court in pursuance of the second and third sentence of this Article requires a two-thirds majority of the Judges present.

#### **115h. Functioning Capability of Constitutional Organs**

(1) Any legislative terms of the House of Representatives or of State parliaments due to end while a State of defence exists end six months after the termination of such State of defence. A term of office of the President due to expire while a State of defence exists, and the exercise of his functions by the President of the Senate in case of the premature vacancy of the President's office, ends nine months after the termination of such State of defence. The term of office of a member of the Federal Constitutional Court due to expire while a State of defence exists ends six months after the termination of such State of defence.

(2) Should the necessity arise for the Joint Committee to elect a new Chancellor, the Committee does so with the majority of its members, the President proposes a candidate to the Joint Committee. The Joint Committee can express its lack of confidence in the Chancellor only by electing a successor with a two-thirds majority of its members.

(3) The dissolution of the House of Representatives is impossible during a State of defence.

#### **115i. Powers of the State Governments**

(1) Where the competent Federal bodies are incapable of taking the measures necessary to avert the danger, and where the situation imperatively calls for immediate independent action in individual parts of the Federal territory, the State Governments or the authorities or commissioners designated by them are authorized to take, within their respective spheres of competence, the measures provided for in Article 115f (1).

(2) Any measures taken in accordance with paragraph (1) of the present Article may be revoked at any time by the Government, or, in relation to State authorities and subordinate Federal authorities, by State Minister-Presidents.

#### **115k. Duration of Validity of Extraordinary Legal Provisions**

(1) Statutes enacted in accordance with Articles 115c, 115e, and 115g, as well as Ordinances issued by virtue of such statutes, shall, for the duration of their applicability, suspend law which is inconsistent with such statutes or Ordinances. This provision does not apply to earlier legislation enacted by virtue of Articles 115c, 115e or 115g.

(2) Statutes adopted by the Joint Committee, as well as Ordinances issued by virtue of such statutes, cease to have effect not later than six months after the termination of a State of defence.

(3) Statutes containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107 applies no longer than the end of the second fiscal year following upon the termination of a State of defence. After such termination

they may, with the consent of the Senate, be amended by Federal legislation so as to return to the provisions made in Sections VIIIa and X

#### **1151. Repeal of Extraordinary Statutes and Measures**

(1) The House of Representatives, with the consent of the Senate, may at any time repeal statutes enacted by the Joint Committee. The Senate may demand that the House of Representatives make a decision on such matter. Any measures taken by the Joint Committee or the Government to avert a danger has to be revoked where the House of Representatives and the Senate so decide.

(2) The House of Representatives, with the consent of the Senate, may at any time declare a State of defence terminated by a decision to be promulgated by the President. The Senate may demand that the House of Representatives make a decision on such matter. The State of defence has to be declared terminated without delay where the prerequisites for its declaration no longer exist.

(3) The conclusion of peace is subject to Federal statute.

### **CHAPTER XI**

#### **TRANSNATIONAL AND CONCLUDING PROVISIONS**

#### **116. Definition of "a German," Re-granting of Citizenship**

(1) Unless otherwise provided by statute, a German within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person.

(2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial or religious grounds, and their descendants, are re-granted German citizenship on application. They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention.

#### **117. Temporary Ruling for Article 3 (2) and Article 11**

(1) Law which is inconsistent with Article 3 (2) remain in force until adapted to that provision of this Constitution, but not beyond 31 March, 1953.

(2) Statutes which restrict the right of freedom of movement in view of the present housing shortage remain in force until repealed by Federal legislation.

#### **118. Baden, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern**

A new delimitation of the territory comprising the States of Baden, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern may be effected, in derogation of the provisions of Article 29, by agreement between the States concerned. Where no agreement is reached, the reorganization is effected by Federal legislation which provides for a plebiscite.

**118a. Berlin and Brandenburg**

The new delimitation of boundaries between Berlin and Brandenburg can, differing from the provisions of Article 29, be constituted by agreement between both States under participation of their electorate.

**119. Ordinances about Refugees and Expellees**

In matters relating to refugees and expellees, in particular as regards their distribution among the States, the Government may, with the consent of the Senate, issue Ordinances having statutory effect, pending the settlement of the matter by Federal legislation. The Government may in this matter be authorized to issue individual instructions for particular cases. Except where there is danger resulting in any delay in taking action, such instructions are addressed to the highest State authorities.

**120. Occupation Costs and Burdens Resulting from the War**

(1) The Federation meets the expenditure for occupation costs and the other internal and external burdens caused by the war, as regulated in detail by Federal legislation. To the extent that these costs and other burdens have been regulated by Federal legislation on or before 1 October 1969, the Federation and the States meet such expenditure between them in accordance with such Federal legislation. Insofar as expenditures for such of these costs and burdens as neither have been nor will be regulated by Federal legislation have been met on or before 1 October 1965 by States, communes, associations of communes or other entities performing functions of the States or the communes, the Federation is not obliged to meet expenditure of that nature even where it arises after that date. The Federation pays the subsidies towards the burdens of social insurance institutions, including unemployment insurance and public assistance to the unemployed. The distribution between the Federation and the States of costs and other burdens caused by the war, as regulated in this paragraph, shall not affect any statutory regulation of claims for indemnification in respect of the consequences of the war.

(2) Revenues pass to the Federation at the same time as the latter assumes responsibility for the expenditure referred to in this Article.

**120a. Implementation of Equalization of Burdens Legislation**

(1) Statutes serving to implement the equalization of burdens may, with the consent of the Senate, stipulate that they are executed, as regards equalization benefits, partly by the Federation and partly by the States acting as agents of the Federation, and that the relevant powers vested in the Government and the competent highest Federal authorities by virtue of Article 85 are wholly or partly delegated to the Federal Equalization Office. In exercising these powers, the Federal Equalization Office does not require the consent of the Senate, with the exception of urgent cases, its instructions has to be given to the highest State authorities (State Equalization Offices).

(2) The provisions of Article 87 (3) 2 are not affected hereby.

**121. Definition of "majority of the members"**

Within the meaning of this Constitution, a majority of the members of the House of Representatives and a majority of the members of the Federal Convention are the majority of the respective statutory number of their members

**122. Transfer of Legislative Powers hitherto Existing**

(1) From the date of the assembly of the House of Representatives, statutes are enacted exclusively by the legislative bodies recognized in this Constitution

(2) Legislative bodies as well as those bodies participating in legislation in an advisory capacity, whose competence ends by virtue of paragraph (1), are dissolved with effect from that date

**123. Continued Validity of Old Law and Previous Treaties**

(1) Law in force before the first assembly of the House of Representatives remains in force insofar as it does not conflict with this Constitution

(2) Subject to all rights and objections of the interested parties, the treaties concluded by the German Reich concerning matters which, under this Constitution, are within the legislative competence of the States, remain in force, provided they are and continue to be valid in accordance with general principles of law, until new treaties are concluded by the agencies competent under this Constitution, or until they are in any other way terminated pursuant to their provisions

**124. Sphere of Exclusive Legislative Power**

Law affecting matters subject to the exclusive legislative power of the Federation becomes Federal law in the area in which it applies

**125. "Inherited" Federal law**

Law affecting matters subject to the concurrent legislative power of the Federation becomes Federal law in the area in which it applies

1 insofar as it applies uniformly within one or more zones of occupation,

2 insofar as it is law by which former Reich law has been amended after 8 May 1945

**125a. Old Federal Law as State Law**

(1) Law adopted as Federal law which, because of changes in Article 74 (1) or 75 (1), could no longer be adopted as Federal law continues to be Federal law. It can be replaced by State law

(2) Law adopted on the basis of Article 72 (2) in the version valid until 15 November 1994 continues to be Federal law. Federal statutes can stipulate its replaceability by State law. This provision applies *mutatis mutandis* for Federal law adopted on the basis of Article 75 (2) which could longer be adopted

**126. Differences about Applicability of Law as Federal Law**

Differences of opinion regarding the applicability of law as Federal law are settled by the Federal Constitutional Court

**127. Legislation of the Bi-zonal Economic Administration**

Within one year of the promulgation of this Constitution the Government may, with the consent of the Governments of the States concerned, extend to the States of Baden, Greater Berlin, Rhineland-Palatinate and Wuerttemberg-Hohenzollern any legislation of the Bi-zonal Economic Administration, insofar as it continues to be in force as Federal law under Article 124 or 125

**128. Continuance of Powers to give Instructions**

Insofar as law continuing in force provides for powers to give instructions within the meaning of Article 84 (5), these powers remain in existence until otherwise provided by statute

**129. Applicability of Authorizations**

(1) Insofar as legal provisions which continue in force as Federal law contain authorizations to issue ordinances or to issue general administrative rules or to perform administrative acts, such authorizations pass to the agencies henceforth competent in the matter. In cases of doubt, the Government decides in agreement with the Senate, such decisions are published

(2) Insofar as legal provisions which continue in force as State law contain such authorizations, they are exercised by the agencies competent under State law

(3) Insofar as legal provisions within the meaning of paragraphs (1) and (2) authorize their amendment or supplementation or the issue of legal instead of statutory provisions, such authorizations are deemed to have expired

(4) The provisions of paragraphs (1) and (2) apply *mutatis mutandis* where legal provisions refer to regulations no longer valid or to institutions no longer in existence

**130. Control over Existing Institutions**

(1) Administrative agencies and other institutions which serve the public administration or the administration of justice and are not based on State law or treaties between States, as well as the Administrative Union of South West German Railroads and the Administrative Council for the Postal Services and Telecommunications of the French Zone of Occupation, are placed under the control of the Government. The Government provides, with the consent of the Senate, for their transfer, dissolution, or liquidation

(2) The highest disciplinary superior of the personnel of these administrative bodies and institutions is the appropriate Minister

(3) Corporate bodies and institutions under public law not directly subordinate to a State nor based on treaties between States are under the supervision of the competent highest Federal authority

**131. Former Public Service Personnel**

Federal legislation is passed to regulate the legal position of persons, including refugees and expellees, who, on 8 May, 1945, were employed in the public service, have left the service for reasons other than those arising from civil service regulations or collective agreement rules, and have not until now been reinstated or are employed in a position not corresponding to their former one. The same applies *mutatis mutandis* to persons, including refugees and expellees, who, on 8 May, 1945, were entitled to a pension and who no longer receive any such pension or any commensurate pension for reasons other than those arising from civil service regulations or collective agreement rules. Until the pertinent Federal statute comes into force, no legal claims can be made, unless otherwise provided by State legislation.

**132. Temporary Revocation of Public Service Rights**

(1) Civil servants and Judges who, when this Constitution comes into force are appointed for life, may, within six months after the first assembly of the House of Representatives, be retired or temporarily retired or be given a different office with lower remuneration where they lack the personal or professional aptitude for their present office. This provision applies *mutatis mutandis* also to salaried public employees, other than civil servants or Judges, whose service cannot be terminated by notice. Where, however, such service can be terminated by notice, periods of notice in excess of the periods fixed by collective agreement rules may be cancelled within the six months referred to above.

(2) The preceding provision does not apply to members of the public service who are not affected by the provisions regarding the "Liberation from National Socialism and Militarism" or who are recognized victims of National Socialism, except on important grounds relating to themselves as individuals.

(3) Those affected may have recourse to the courts in accordance with Article 19 (4).

(4) Details are specified by an Ordinance of the Government requiring the consent of the Senate.

**133. Bi-zonal Economic Administration**

The Federation succeeds to the rights and obligations of the Bi-zonal Economic Administration.

**134. Reich Property to become Federal Property**

(1) Reich property on principle becomes Federal property.

(2) Insofar as such property was originally intended to be used predominantly for administrative tasks which, under this Constitution, are not administrative tasks of the Federation, it is transferred without compensation to the agencies now charged with such tasks, and to the States insofar as it is being used at present, and not merely temporarily, for administrative tasks which under this Constitution are now within the administrative competence of the States. The Federation may also transfer other property to the States.

(3) Property which was placed at the disposal of the Reich by States or communes or associations of communes without compensation again becomes the property of such States or communes or associations of communes, insofar as it is not required by the Federation for its own administrative tasks

(4) Details are regulated by a Federal statute requiring the consent of the Senate

### **135. Succession to Property of Old States and Corporate Bodies**

(1) Where after 8 May 1945 and before the coming into force of this Constitution an area has passed from one State to another, the State to which the area now belongs is entitled to the property located therein of the State to which it belonged

(2) Property of States or corporate bodies or institutions under public law which no longer exist passes, insofar as it was originally intended to be used predominantly for administrative tasks or is being used at present, and not merely temporarily, predominantly for administrative tasks, to the State or the corporate body or institution under public law which now discharges these tasks

(3) Real estate of States which no longer exist, including appurtenances, passes to the State within which it is located, insofar as it is not included among property within the meaning of paragraph (1)

(4) Where an overriding interest of the Federation or the particular interest of an area so requires, a settlement other than in paragraphs (1) to (3) may be effected by Federal legislation

(5) In all other respects, the succession in title and the settlement of the property, insofar as it has not been effected before 1 January 1952 by agreement between the States or corporate bodies or institutions under public law concerned, is regulated by Federal legislation requiring the consent of the Senate

(6) Interests of the former State of Prussia in enterprises under private law passes to the Federation. A Federal statute, which may also diverge from this provision, regulates the details

(7) Insofar as property which on the coming into force of this Constitution would devolve upon a State or a corporate body or institution under public law pursuant to paragraphs (1) to (3) has been disposed of through or by virtue of a State law or in any other manner by the party thus entitled, the transfer of the property is deemed to have taken place before such disposition

### **135a. Old Liabilities**

(1) The legislation reserved to the Federation in Article 134 (4) and in Article 135 (5) may also stipulate that the following liabilities are not discharged, or not to their full extent

1 Liabilities of the Reich or liabilities of the former State of Prussia or liabilities of such corporate bodies and institutions under public law as no longer exist,

2 such liabilities of the Federation or corporate bodies and institutions under public law as are connected with the transfer of properties pursuant to Articles 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under number 1,

3 such liabilities of States or communes or associations of communes as have arisen from measures taken by these legal entities before 1 August 1945 within the framework of administrative functions incumbent upon or delegated by the Reich to comply with regulations of occupying powers or to put an end to a State of emergency due to the war

(2) Paragraph (1) above applies *mutatis mutandis* to liabilities of the German Democratic Republic or its legal entities as well as to liabilities of the Federation or other corporate bodies and institutions under public law which are connected with the transfer of properties of the German Democratic Republic to the Federation, States and communes, and to liabilities arising from measures taken by the German Democratic Republic or its legal entities

### **136. First assembly of the Senate**

(1) The Senate assembles for the first time on the day of the first assembly of the House of Representatives

(2) Until the election of the first President, his powers are exercised by the President of the Senate. He does not have the right to dissolve the House of Representatives

### **137. Right of Civil Servants to stand for Election**

(1) The right of civil servants, of other salaried public employees, of professional soldiers, of temporary volunteer soldiers or of judges to stand for election in the Federation, in the States or in the communes may be restricted by legislation

(2) The electoral statute to be adopted by the Parliamentary Council applies to the election of the first House of Representatives, of the first Federal Convention and of the first President of the Federal Republic

(3) The function of the Federal Constitutional Court pursuant to Article 41 (2), pending its establishment, is exercised by the German High Court for the Combined Economic Area, which decides in accordance with its rules of procedure

### **138. Southern German Notaries**

Changes in notarial institutions as presently existing in the States of Baden, Bavaria, Wuertemberg-Baden and Wuertemberg-Hohenzollern require the consent of the Governments of these States

### **139. Continued Validity of Denazification Provisions**

The legislation enacted for the "Liberation of the German People from National Socialism and Militarism" is not affected by the provisions of this Constitution

**140. Law of Religious Bodies**

The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 are integral parts of this Constitution

**141. "Bremen Clause"**

Article 7 (3) 1 does not be applied in any State in which different provisions of State law were in force on 1 January 1949

**142. Basic Rights in State Constitutions**

Notwithstanding the provision of Article 31, such provisions of State Constitutions also remain in force as guarantee basic rights in conformity with Articles 1 to 18 of this Constitution

**142a. {...}****143. Limitation of Deviations**

(1) Law in the territory specified in Article 3 of the Unification Treaty may deviate from provisions of this Constitution for a period not extending beyond 31 December 1992 in so far as and as long as no complete adjustment to the order of the Constitution can be achieved as a consequence of the different conditions. Deviations must not violate Article 19 (2) and must be compatible with the principles set out in Article 79 (3)

(2) Deviations from sections II, VIII, VIIIa, IX, X and XI are permissible for a period not extending beyond 31 December 1995

(3) Notwithstanding paragraphs (1) and (2) above, Article 41 of the Unification Treaty and the rules for its implementation remain valid in so far as they provide for the irreversibility of intrusion on property in the territory specified in Article 3 of the said Treaty

**143a. Changes of Railroad Administration**

(1) The Federation has exclusive legislation in all matters arising from the transformation of railroads of the Federation from direct Federal administration to businesses. Article 87e (5) is applicable *mutatis mutandis*. Officials of railroads of the Federation can, by statute preserving their legal position and the responsibility of their former employer, be assigned to work at railroads of the Federation organized under private law

(2) Statutes according to paragraph (2) are administered by the Federation

(3) The discharge of all duties in the area of local railway transport of persons by former railroads of the Federation is a responsibility of the Federation until 31 December 1995. This provision applies *mutatis mutandis* for tasks of railway traffic administration. Details are regulated by Federal statute requiring the consent of the Senate

**143b. Businesses of the Former Deutsche Bundespost**

(1) The special property Deutsche Bundespost will be transformed into private law businesses according to a Federal statute. The Federation has exclusive legislation over all related matters

(2) Exclusive rights of the Federation prior to the transformation can be delegated preliminarily to businesses originating in the Deutsche Bundespost: POSTDIENST and Deutsche Bundespost TELEKOM. The Federation may sell the majority of shares in the business originating in the Deutsche Bundespost: POSTDIENST no earlier than five years after enacting the statute. For this measure, a Federal statute with consent of the Senate is required.

(3) Federal officers of the Deutsche Bundespost are being employed by the businesses preserving their legal position and the responsibility of their former employer. These businesses exercise the rights of the former employer. Details are regulated by Federal statute.

#### **144. Ratification of the Constitution**

(1) This Constitution requires ratification by the parliaments of two thirds of the German States in which it is for the time being to apply.

(2) Insofar as the applications of this Constitution is subject to restrictions in any State listed in Article 23 or in any part thereof, such State or part thereof has the right to send representatives to the House of Representatives in accordance with Article 38 and to the Senate in accordance with Article 50.

#### **145. Promulgation of the Constitution**

(1) The Parliamentary Council confirms in public session, with the participation of the deputies of Greater Berlin, the fact of ratification of this Constitution and signs and promulgates it.

(2) This Constitution comes into force at the end of the day of promulgation.

(3) It is published in the Federal Law Gazette.

#### **146. Duration of validity of the Constitution**

This Constitution, which is valid for the entire German people following the achievement of the unity and freedom of Germany, ceases to be in force on the day on which a constitution adopted by a free decision of the German people comes into force.

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# 15

## CONSTITUTION OF INDIA

### PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens

JUSTICE, social, economic and political,

LIBERTY of thought, expression, belief, faith and worship,

EQUALITY of status and of opportunity, and to promote among them all,

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation,

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

### PART I

#### THE UNION AND ITS TERRITORY

##### 1. Name and territory of the Union

(1) India, that is Bharat, shall be a Union of States

(2) The States and the territories thereof shall be as specified in the First Schedule

(3) The territory of India shall comprise—

(a) The territories of the States,

(b) the Union territories specified in the First Schedule, and

(c) such other territories as may be acquired

## 2. Admission or establishment of new States

Parliament may by law admit into the Union, or establish, new States on such terms and conditions, as it thinks fit

### 2A. Sikkim to be associated with the Union

[*Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, sect. 5 (w.e.f. 26-4-1975)*]

## 3. Formation of new States and alteration of areas, boundaries or names of existing States

Parliament may by law —

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State,

(b) increase the area of any State,

(c) diminish the area of any State,

(d) alter the boundaries of any State,

(e) alter the name of any State

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired

*Explanation I* —In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory

*Explanation II* —The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory

## 4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters

(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368

**PART II**  
**CITIZENSHIP**

**5. Citizenship at the commencement of the Constitution**

At the commencement of this Constitution every person who has his domicile in the territory of India and

- (a) who was born in the territory of India, or
  - (b) either of whose parents was born in the territory of India, or
  - (c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement,
- shall be a citizen of India

**6. Rights of citizenship of certain persons who have migrated to India from Pakistan**

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application

**7. Rights of citizenship of certain migrants to Pakistan**

Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

**8. Rights of citizenship of certain persons of Indian origin residing outside India**

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India

**9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens**

No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State

**10. Continuance of the rights of citizenship**

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen

**11. Parliament to regulate the right of citizenship by law**

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship

**PART III**  
**FUNDAMENTAL RIGHTS**  
**GENERAL**

**12. Definition**

In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

**13. Laws inconsistent with or in derogation of the fundamental rights**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law,

(b) "laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368

### *Right of Equality*

#### **14. Equality before law**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

#### **15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

#### **16. Equality of opportunity in matters of public employment**

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of State are not adequately represented in the services under the State

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

#### 17. Abolition of untouchability

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law

#### 18. Abolition of titles

(1) No title, not being a military or academic distinction, shall be conferred by the State

(2) No citizen of India shall accept any title from any foreign State

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State

#### *Right to Freedom*

#### 19. Protection of certain rights regarding freedom of speech, etc —

(1) All citizens shall have the right

(a) to freedom of speech and expression,

(b) to assemble peaceably and without arms,

(c) to form associations or unions,

(d) to move freely throughout the territory of India,

(e) to reside and settle in any part of the territory of India, and

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(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

## 20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

**21. Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law

**22. Protection against arrest and detention in certain cases**

(1) No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provision of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class of

classes of cases be detained under any law providing for preventive detention, and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)

*Right against Exploitation*

**23. Prohibition of traffic in human beings and forced labour**

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

**24. Prohibition of employment of children in factories, etc.—**

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

*Right to Freedom of Religion*

**25. Freedom of conscience and free profession, practice and propagation of religion**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

*Explanation I*—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion

*Explanation II*.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

**26. Freedom to manage religious affairs**

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes,

(b) to manage its own affairs in matters of religion,

(c) to own and acquire movable and immovable property, and

(d) to administer such property in accordance with law

**27. Freedom as to payment of taxes for promotion of any particular religion**

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

**28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions**

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto

***Cultural and Educational Rights*****29. Protection of interests of minorities**

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

**30. Right of minorities to establish and administer educational institutions**

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

**31. Compulsory acquisition of property**

[Rep by the Constitution (Forty-fourth Amendment) Act, 1978, sec 6 (w e f 20-6-1979) ]

*Saving of certain Laws***31A. Saving of laws providing for acquisition of estates, etc.**

(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof

(2) In this article,—

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include

(i) any *jagir*, *inam* or *muafi* or other similar grant and in the States of Tamil Nadu and Kerala, any *janmam* right,

(ii) any land held under *ryotwary* settlement,

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or

sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans,

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder, *rayat*, under-*rayat* or other intermediary and any rights or privileges in respect of land revenue.

### 31B. Validation of certain Acts and Regulations

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force

### 31C. Saving of laws giving effect to certain directive principles

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent

### 31D. Saving of laws in respect of anti-national activities

[Rep by the Constitution (Forty-third Amendment) Act, 1977, sec 2 (w e f 13-4-1978) ]

### *Right to Constitutional Remedies*

### 32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

**32A. Constitutional validity of State laws not to be considered in proceedings under article 32**  
*[Rep by the Constitution (Forty-third Amendment) Act, 1977, sec 3 (w e f 13-4-1978) ]*

**33 Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.**

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

- (a) the members of the Armed Forces, or
- (b) the members of the Forces charged with the maintenance of public order, or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them

**34. Restriction on rights conferred by this Part while martial law is in force in any area**

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area

**35. Legislation to give effect to the provisions of this Part**

Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament, and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part,

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii),

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters

referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (n) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament

*Explanation*—In this article, the expression “law in force” has the same meaning as in article 372

## **PART IV**

### **DIRECTIVE PRINCIPLES OF STATE POLICY**

#### **36. Definition**

In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III

#### **37. Application of the principles contained in this Part**

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws

#### **38 State to secure a social order for the promotion of welfare of the people**

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

#### **39. Certain principles of policy to be followed by the State—**

The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood,

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment,

(d) that there is equal pay for equal work for both men and women,

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength,

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

#### 39A. Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities

#### 40. Organisation of village panchayats

The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government

#### 41. Right to work, to education and to public assistance in certain cases

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

#### 42. Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and for maternity relief

#### 43. Living wage, etc., for workers

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas

#### 43A. Participation of workers in management of industries

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

#### 44. Uniform civil code for the citizens

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India

#### 45. Provision for free and compulsory education for children

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years

**46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections**

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

**47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

**48. Organisation of agriculture and animal husbandry**

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle

**48A. Protection and improvement of environment and safeguarding of forests and wild life**

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

**49. Protection of monuments and places and objects of national importance**

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be

**50. Separation of judiciary from executive**

The State shall take steps to separate the judiciary from the executive in the public services of the State

**51. Promotion of international peace and security**

The State shall endeavour to—

- (a) promote international peace and security,
- (b) maintain just and honourable relations between nations,
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another, and
- (d) encourage settlement of international disputes by arbitration

## **PART IVA**

### **FUNDAMENTAL DUTIES**

#### **51A. Fundamental duties**

It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom,

(c) to uphold and protect the sovereignty, unity and integrity of India,

(d) to defend the country and render national service when called upon to do so,

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture,

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform,

(i) to safeguard public property and to abjure violence,

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

## **PART V**

### **THE UNION**

#### **CHAPTER I**

### **THE EXECUTIVE**

#### *The President and Vice-President*

#### **52. The President of India**

There shall be a President of India

#### **53. Executive power of the Union**

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority, or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

#### 54. Election of President

The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States

*Explanation*—In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union Territory of Pondicherry.

#### 55. Manner of election of President

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner.—

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly,

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one,

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot

*Explanation*—In this article, the expression “population” means the population ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census

**56. Term of office of President**

(1) The President shall hold office for a term of five years from the date on which he enters upon his office

Provided that—

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office,

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People

**57. Eligibility for re-election**

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

**58. Qualifications for election as President**

(1) No person shall be eligible for election as President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments

*Explanation*—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State

**59. Conditions of President's office**

(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President

(2) The President shall not hold any other office of profit

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule

(4) The emoluments and allowances of the President shall not be diminished during his term of office

#### 60. Oath or affirmation by the President

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say

"I, A B, do swear in the name of God  
solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will do the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India "

#### 61. Procedure for impeachment of the President

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two thirds of the total membership of the House

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or cause to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed

#### 62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office

**63. The Vice-President of India**

There shall be a Vice-President of India

**64. The Vice-President to be *ex-officio* Chairman of the Council of States**

The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97

**65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President**

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule

**66. Election of Vice-President**

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President

(3) No person shall be eligible for election as Vice-President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years,

(c) is qualified for election as a member of the Council of States

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of said Governments.

**Explanation** For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State

#### 67. Term of office of Vice-President

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office,

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People, but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution,

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

#### 68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office

#### 69. Oath or affirmation by the Vice-President

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

"I, A.B, do swear in the name of God solemnly affirm that I will bear true faith, and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter "

#### 70. Discharge of President's functions in other contingencies

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter

#### 71. Matters relating to, or connected with, the election of a President or Vice-President

(1) All doubts and disputes arising out of or in connection with the

election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him

## **72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases**

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial,

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends,

(c) in all cases where the sentence is a sentence of death

(2) Nothing in sub-clause (a) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force

## **73. Extent of executive power of the Union**

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws, and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty on agreement

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or

authority thereof could exercise immediately before the commencement of this Constitution

#### *Council of Ministers*

#### **74. Council of Ministers to aid and advise President**

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court

#### **75. Other provisions as to Ministers**

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister

(2) The Ministers shall hold office during the pleasure of the President

(3) The Council of Ministers shall be collectively responsible to the House of the People

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule

#### *The Attorney-General for India*

#### **76. Attorney-General for India**

(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine

*Conduct of Government Business***77. Conduct of business of the Government of India**

(1) All executive actions of the Government of India shall be expressed to be taken in the name of the President

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

**78. Duties of Prime Minister as respects the furnishing of information to the President, etc.**

It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation,

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for, and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

**CHAPTER II**  
**PARLIAMENT**  
*General*

**79. Constitution of Parliament**

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People

**80. Composition of the Council of States**

(1) The Council of States shall consist of—

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3), and

(b) not more than two hundred and thirty-eight representatives of the States and of the Union territories

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely

Literature, science, art and social service

(4) The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote

(5) The representatives of the Union Territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe

### **81. Composition of the House of the People**

(1) Subject to the provisions of Article 331, the House of the People shall consist of—

(a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide

(2) For the purposes of sub-clause (a) of clause (1)

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States, and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census

### **82. Readjustment after each census**

Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House

Provided further that such readjustment shall take effect from such date as President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article

### 83. Duration of Houses of Parliament

(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate

### 84. Qualification for membership of Parliament

A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule,

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament

### 85. Sessions of Parliament, prorogation and dissolution

(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session

(2) The President may from time to time—

(a) prorogue the Houses or either House,

(b) dissolve the House of the People

**86. Right of President to address and send messages to Houses**

(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration

**87. Special address by the President**

(1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons

(2) Provision shall be made by rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address

**88. Rights of Ministers and Attorney-General as respects Houses**

Every Minister and the Attorney-General for India shall have the right to speak in, and otherwise to take part in the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote

*Officers of Parliament***89. The Chairman and Deputy Chairman of the Council of States**

(1) The Vice-President of India shall be *ex officio* Chairman of the Council of States

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof

**90. Vacation and resignation of, and removal from, the office of Deputy Chairman**

A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council,

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office, and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution

**91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman**

(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

**92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration**

(1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings

**93. The Speaker and Deputy Speaker of the House of the People**

The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be

**94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker**

A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office, and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution

**95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker**

(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker

**96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration**

(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes

**97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker**

There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule

**98. Secretariat of Parliament**

(1) Each House of Parliament shall have a separate secretarial staff

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause

### *Conduct of Business*

#### **99. Oath or affirmation by members**

Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule

#### **100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum**

(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum

### *Disqualifications of Members*

#### **101. Vacation of seats**

(1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration

of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102, or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days

## 102. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder,

(b) if he is of unsound mind and stands so declared by a competent court,

(c) if he is an undischarged insolvent,

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State,

(e) if he is so disqualified by or under any law made by Parliament

*Explanation*—For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule

## 103. Decision on questions as to disqualifications of members

(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in

## Articles 104-106]

clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion

**104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified**

If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union

*Powers, Privileges and Immunities of Parliament and its Members*

**105. Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof**

(1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act 1978

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament

**106. Salaries and allowances of members**

Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India

*Legislative Procedure***107. Provisions as to introduction and passing of Bills**

(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed by both Houses

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the provisions of article 108, lapse on a dissolution of the House of the People

**108 Joint sitting of both Houses in certain cases**

(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House, or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill, or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it

The President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill

Provided that nothing in this clause shall apply to a Money Bill

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of

the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill,

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein

#### 109. Special procedure in respect of Money Bills

(1) A Money Bill shall not be introduced in the Council of States

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People

#### 110. Definition of "Money Bill"

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely —

(a) the imposition, abolition, remission, alteration or regulation of any tax,

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India,

(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund,

(d) the appropriation of moneys out of the Consolidated Fund of India,

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure,

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State, or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f)

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill

### 111. Assent to Bills

When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom

*Procedures in Financial Matters***112. Annual financial statement**

(1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India, and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India, and shall distinguish expenditure on revenue account from other expenditure

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India —

(a) the emoluments and allowances of the President and other expenditure relating to his office,

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People,

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt,

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,

(ii) the pensions payable to or in respect of Judges of the Federal Court,

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercises jurisdiction in relation to any area included in a Governor's Province of the Dominion of India,

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India,

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal,

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged

**113. Procedure in Parliament with respect to estimates**

(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament,

but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the President

#### **114. Appropriation Bills**

(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People, and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article

#### **115. Supplementary, additional or excess grants**

(1) The President shall—

(a) If the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated

Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant

**116. Votes on account, votes of credit and exceptional grants**

(1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure,

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement,

(c) to make an exceptional grant which forms no part of the current service of any financial year, and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure

**117. Special provisions as to financial Bills**

(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill



**122. Courts not to inquire into proceedings of Parliament**

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers

**CHAPTER III****LEGISLATIVE POWERS OF THE PRESIDENT****123. Power of President to promulgate Ordinances during recess of Parliament**

(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions, and

(b) may be withdrawn at any time by the President

*Explanation*—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void

**CHAPTER IV****THE UNION JUDICIARY****124. Establishment and Constitution of Supreme Court**

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven\* other Judges

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of

\*The maximum number of Judges of the Supreme Court excluding the Chief Justice of India has been raised to twenty-five by the Supreme Court (Number of Judges) Amendment Act, 1986 (22 of 1986)

the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted

Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office,

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession, or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession, or

(c) is, in the opinion of the President, a distinguished jurist

*Explanation I* —In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India

*Explanation II* —In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India

## 125. Salaries, etc., of Judges

(1) There shall be paid to the Judges of the Supreme Court such salaries

as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment

#### 126. Appointment of acting Chief Justice

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

#### 127. Appointment of *ad hoc* Judges

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court

#### 128. Attendance of retired Judges at sittings of the Supreme Court

Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do

**129. Supreme Court to be a court of record**

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

**130. Seat of Supreme Court**

The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint

**131. Original jurisdiction of the Supreme Court**

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States, or
- (b) between the Government of India and any State or States on one side and one or more other States on the other, or
- (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, named or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute

**131A. Exclusive jurisdiction of the Supreme Court in regard to question as to constitutional validity of Central Laws**

[Rep by the Constitution (Forty-third Amendment) Act, 1977, sec. 4 (w e f 13 4 1978 )]

**132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided

*Explanation*—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case

**133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters**

(1) An appeal shall lie to the Supreme Court from any judgment, decree

or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—

(a) that the case involves a substantial question of law of general importance, and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court

#### 134. Appellate jurisdiction of Supreme Court in regard to criminal matters

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or

(c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law

#### 134A. Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—

(a) may, if it deems fit so to do, on its own motion, and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case

### **135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court**

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

### **136. Special leave to appeal by the Supreme Court**

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

### **137. Review of judgments or orders by the Supreme Court**

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it

### **138. Enlargement of the jurisdiction of the Supreme Court**

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer

(2) The Supreme Court shall have such further jurisdiction, and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

### **139. Conferment on the Supreme Court of powers to issue certain writs**

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warrant*o and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32

### **139A. Transfer of certain cases**

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its

judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court

#### 140. Ancillary powers of Supreme Court

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution

#### 141. Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India

#### 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself

#### 143. Power of President to consult Supreme Court

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon

#### 144. Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court

**144A. Special provisions as to disposal of questions relating to constitutional validity of laws**

*[Rep by the Constitution (Forty-third Amendment) Act, 1977, sec. 5 (wef 13 4 1978) ]*

**145. Rules of Court, etc**

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered,

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III,

(cc) rules as to the proceedings in the Court under article 139A,

(d) rules as to the entertainement of appeals under sub-clause (c) of clause (1) of article 134,

(e) rules as to conditions subject to which any judgment pronounced or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered,

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein,

(g) rules as to the granting of bail,

(h) rules as to stay of proceedings,

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay,

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the

appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion

(4) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open court

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion

#### 146. Officers and servants and the expenses of the Supreme Court

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the offices and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund

#### 147 Interpretation

In this Chapter and in Chapter V of Part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder

## CHAPTER V

## COMPTROLLER AND AUDITOR-GENERAL OF INDIA

## 148. Comptroller and Auditor-General of India

(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined, shall be as specified in the Second Schedule.

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General

(6) The Administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India

## 149. Duties and powers of the Comptroller and Auditor-General

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

## 150. Form of accounts of the Union and of the States

The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe

**151. Audit reports**

(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State

**PART VI**  
**THE STATES**

**CHAPTER I**  
**GENERAL**

**152. Definition**

In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir.

**CHAPTER II**  
**THE EXECUTIVE**  
*The Governor*

**153. Governors of States**

There shall be a Governor for each State.

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States

**154. Executive power of State**

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority, or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

**155. Appointment of Governor**

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

**156. Term of office of Governor**

(1) The Governor shall hold office during the pleasure of the President

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold for a term of five years from the date on which he enters upon his office

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

### 157. Qualifications for appointment as Governor

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years

### 158. Conditions of Governor's office

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor

(2) The Governor shall not hold any other office of profit

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office

### 159. Oath or affirmation by Governor

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say

"I, A B, do swear in the name of God that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of solemnly affirm (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of (name of the State)"

### 160. Discharge of the functions of the Governor in certain contingencies

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter

### 161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends

### 162. Extent of executive power of State

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof

### Council of Ministers

### 163. Council of Ministers to aid and advise Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court

### 164. Other provisions as to Ministers

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule

### *The Advocate-General for the State*

#### **165. Advocate-General for the State**

(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine

### *Conduct of Government Business*

#### **166. Conduct of business of the Government of a State**

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion

#### **167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.**

*It shall be the duty of the Chief Minister of each State—*

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation,

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for, and

(c) if the Governor so requires, to submit for the consideration of the

Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

### CHAPTER III THE STATE LEGISLATURE

#### *General*

#### 168. Constitution of Legislatures in States

(1) For every State there shall be a Legislature which shall consist of the Governor, and —

(a) in the States of Bihar,, Maharashtra, Karnataka and Uttar Pradesh, two houses

(b) in other States, one House

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly

#### 169. Abolition or creation of Legislative Councils in States

(1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368

#### 170. Composition of the Legislative Assemblies

(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State

*Explanation* —In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the

relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause

#### **171. Composition of the Legislative Councils**

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3)

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify,

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university,

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament,

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly,

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5)

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the election under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely —

Literature, science, art, co-operative movement and social service

#### 172. Duration of State Legislatures

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate

#### 173. Qualification for membership of the State Legislature

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule,

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age, and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament

#### 174. Sessions of the State Legislature, prorogation and dissolution

(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session

(2) The Governor may from time to time—

(a) prorogue the House or either House,

(b) dissolve the Legislative Assembly

#### 175. Right of Governor to address and send messages to the House or Houses

(1) The Governor may address the Legislative Assembly or, in the case of

a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration

#### **176. Special address by the Governor**

(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address

#### **177. Rights of Ministers and Advocate-General as respects the Houses**

Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote

#### *Officers of the State Legislature*

#### **178. The Speaker and Deputy Speaker of the Legislative Assembly**

Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speakers thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be

#### **179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker**

A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly,

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office, and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all then members of the Assembly

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution

**180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker**

(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker

**181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration**

(1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes

**182. The Chairman and Deputy Chairman of the Legislative Council**

The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be

**183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman**

A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(a) shall vacate his office if he ceases to be a member of the Council,

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office, and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution

**184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman**

(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman

**185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration**

(1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes

**186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman**

There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule

**187. Secretariat of State Legislature**

(1) The House or each House of the Legislature of a State shall have a separate secretarial staff

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause

### *Conduct of Business*

#### **188. Oath or affirmation by members**

Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule

#### **189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum**

(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum

### *Disqualifications of Members*

#### **190. Vacation of seats**

(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191, or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days

### 191. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,

(b) if he is of unsound mind and stands so declared by a competent court,

(c) if he is an undischarged insolvent,

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State,

(e) if he is so disqualified by or under any law made by Parliament

*Explanation*—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule

**192. Decision on questions as to disqualifications of members**

(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion

**193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified**

If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State

**Powers, Privileges and Immunities of State Legislatures and their Members**

**194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof**

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature

**195. Salaries and allowances of members**

Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding province

***Legislative Procedure*****196. Provisions as to introduction and passing of Bills**

(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly

**197. Restriction on powers of Legislative Council as to Bills other than Money Bills**

(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council, or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council, or

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it, or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly

(3) Nothing in this article shall apply to a Money Bill

### 198. Special procedure in respect of Money Bills

(1) A Money Bill shall not be introduced in a Legislative Council

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly

### 199. Definition of "Money Bills"

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely —

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State,

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund,

(d) the appropriation of moneys out of the Consolidated Fund of the State,

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure,

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money, or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f)

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill

## **200. Assent to Bills**

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill

**201. Bills reserved for consideration**

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration

***Procedure in Financial Matters*****202. Annual financial statement**

(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State, and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State, and shall distinguish expenditure on revenue account from other expenditure

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State —

(a) the emoluments and allowances of the Governor and other expenditure relating to his office,

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council,

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt,

(d) expenditure in respect of the salaries and allowances of Judges of any High Court,

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal,

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged

**203. Procedure in Legislature with respect to estimates**

(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the Governor

**204. Appropriation Bills**

(1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(a) the grants so made by the Assembly, and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article

**205 Supplementary, additional or excess grants**

(1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant

#### 206. Votes on account, votes of credit and exceptional grants

(1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure,

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement,

(c) to make an exceptional grant which forms no part of the current service of any financial year,

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure

#### 207. Special provisions as to financial Bills

(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill

### *Procedure Generally*

#### **208. Rules of procedure**

(1) A House of the Legislature of a State may make rules for regulating subject to the provisions of this Constitution, its procedure and the conduct of its business

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses

#### **209. Regulation by law of procedure in the Legislature of the State in relation to financial business**

The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail

#### **210 Language to be used in the Legislature**

(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom

Provided that in relation to the Legislatures of the States of Himachal Pradesh, Manipur, Meghalaya and Tripura this clause shall have effect as if for the words "fifteen years" occurring therein, the words "twenty-five years" were substituted.

Provided further that in relation to the Legislature of the States of Arunachal Pradesh, Goa and Mizoram, this clause shall have effect as if for the words "fifteen years" occurring therein, the words "forty years" were substituted.

#### 211. Restriction on discussion in the Legislature

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties

#### 212. Courts not to inquire into proceedings of the Legislature

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers

### CHAPTER IV

### LEGISLATIVE POWER OF THE GOVERNOR

#### 213. Power of Governor to promulgate Ordinances during recess of Legislature

(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature, or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council, and

(b) may be withdrawn at any time by the Governor

*Explanation*—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him

## **CHAPTER V**

### **THE HIGH COURTS IN THE STATES**

#### **214. High Courts for States**

There shall be a High Court for each State

#### **215. High Courts to be courts of record**

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

#### **216. Constitution of High Courts**

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint

#### **217. Appointment and conditions of the office of a Judge of a High Court**

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court, and shall hold

office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office,

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court,

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

(a) has for at least ten years held a judicial office in the territory of India, or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession,

*Explanation*—For the purposes of this clause—

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law,

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final

## 218. Application of certain provisions relating to Supreme Court to High Courts

The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court

**219. Oath or affirmation by Judges of High Courts**

Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule

**220. Restriction on practice after being a permanent Judge**

No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts

*Explanation*—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956

**221. Salaries, etc., of Judges**

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence shall be varied to his disadvantage after his appointment

**222. Transfer of a Judge from one High Court to another**

(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix

**223. Appointment of acting Chief Justice**

When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose

**224. Appointment of additional and acting Judges**

(1) If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased,

the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years

#### 224A. Appointment of retired Judges at sittings of High Courts

Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do

#### 225. Jurisdiction of existing High Courts

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction

#### 226 Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warrant* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and

(b) giving such party an opportunity of being heard,  
makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open, and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32

**226A. Constitutional validity of Central laws not to be considered in proceedings under Article 226**

*[Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 8 (w.e.f. 13.4.1978)]*

**227. Power of superintendence over all courts by the High Court**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may—

(a) call for returns from such courts,

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

#### 228. Transfer of certain cases to High Court

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment

#### 228A. Special provisions as to disposal of question relating to constitutional validity of State Laws

[Rep by the Constitution (Forty-third Amendment) Act, 1977, sec 10, (w e f 13-4-1978) ]

#### 229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund

**230. Extension of jurisdiction of High Courts to Union territories**

(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory,—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction, and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

**231. Establishment of a common High Court for two or more States**

(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory

(2) In relation to any such High Court,—

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

(c) the reference in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat

Provided that if such principal seat is in a Union territory, the references in articles 210 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India

*232. [Omitted vide Constitution (Seventh Amendment) Act, 1956.]*

## **CHAPTER VI**

### **SUBORDINATE COURTS**

**233. Appointment of district judges**

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment

**233A. Validation of appointments of, and judgments, etc., delivered by, certain district judges**

Notwithstanding any judgment, decree or order of any court,—

(a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions,

(b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions

**234. Recruitment of persons other than district judges to the judicial service**

Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State

**235. Control over subordinate courts**

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law

**236. Interpretation**

In this Chapter—

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge,

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge

### **237. Application of the provisions of this Chapter to certain class or classes of magistrates**

The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification

## **PART VII**

[The States in Part B of the First Schedule.—

*Rep by the Constitution (Seventh Amendment) Act, 1956, sec 29 and Sch ]*

## **PART VIII**

### **THE UNION TERRITORIES**

#### **239. Administration of Union territories**

(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers

#### **239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories**

(1) Parliament may by law create for the Union territory of Pondicherry—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution

#### **239AA. Special provisions with respect to Delhi**

(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the

National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively, and my reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2, and 18

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly

(4) There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to given such direction in the matter as he deems necessary

(5) The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President

(6) The Council of Ministers shall be collectively responsible to the Legislative assembly

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively, and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB as the case may be

#### **239AB Provisions in case of failure of constitutional machinery**

If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions or article 239AA or of any law made in pursuance of that article, or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do,

the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in

such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA

**239B Power of administrator to promulgate Ordinances during recess of Legislature**

(1) If at any time, except when the Legislature of the Union territory of Pondicherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require

Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf

Provided further that whenever the said legislature is dissolved, or its functioning from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension

(2) An Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, but every such Ordinance—

(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution, and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of article 239A, it shall be void

**240. Power of President to make regulations for certain Union territories**

(1) The President may make regulations for the peace, progress and good Government of the Union territory of—

(a) the Andaman and Nicobar Islands,

(b) Lakshadweep,

(c) Dadra and Nagar Haveli,

(d) Daman and Diu,

(e) Pondicherry.

Provided that when any body is created under article 239A to function as a Legislature for the Union territories of Pondicherry, the President shall not make any regulation for the peace, progress and good Government of that Union territory with effect from the date appointed for the first meeting of the Legislature

Provided further that whenever the body functioning as a Legislature for the Union territory of Pondicherry is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A, the President may during the period of such dissolution or suspension, make regulations for the peace, progress and good Government of that Union territory

(2) Any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory

#### 241. High Courts for Union territories

(1) Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from any Union territory or part thereof

#### 242. Coorg

[Rep by the Constitution (Seventh Amendment) Act, 1956 sec 29 and Sch ]

The territories in Part D of the First Schedule and other territories not specified in that Schedule.

[Rep by the Constitution (Seventh Amendment) Act 1956 sec. 29 and Sch (wef 1-11-1956) ]

**PART IX**  
**THE PANCHAYATS**

**243. Definitions**

In this Part, unless the context otherwise requires,—

- (a) 'district' means a district in a State,
- (b) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level,
- (c) 'intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part,
- (d) 'Panchayat' means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas,
- (e) 'Panchayat area' means the territorial area of a Panchayat,
- (f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published,
- (g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified

**243A. Gram Sabha**

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide

**243B. Constitution of Panchayats**

- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part
- (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs

**243C. Composition of Panchayats**

- (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

- (2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area

- (3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level,

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level,

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat,

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level,

(ii) a Panchayat area at the district level, in Panchayat at the district level

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats

(5) The Chairperson of—

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide, and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof

### **243D Reservation of seats**

(1) Seats shall be reserved for,—

(a) the Scheduled Castes, and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens

#### 243E. Duration of Panchayats etc

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1),

(b) before the expiration of a period of six months from the date of its dissolution

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved

**243F. Disqualifications for membership**

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years,

(b) if he is so disqualified by or under any law made by the Legislature of the State

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide

**243G. Powers, authority and responsibilities of Panchayats**

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice,

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

**243H. Powers to impose taxes by, and funds of, the Panchayats**

The Legislature of a State may, by law,—

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits,

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits,

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State, and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom,  
as may be specified in the law

**243I. Constitution of finance Commissions to review financial position**

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds,

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats,

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State,

(b) the measures needed to improve the financial position of the Panchayats,

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them,

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State

**243J. Audit of accounts of Panchayats**

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts

**243K. Elections to the Panchayats**

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a

High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1)

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats

#### **243L. Application to Union territories**

The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification

#### **243M. Part not to apply to certain areas**

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244

(2) Nothing in this Part shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram,

(b) the Hill areas in the State of Manipur for which District Councils exist under any law for the time being in force

(3) Nothing in this Part—

(a) relating to Panchayats at the district level shall apply to the Hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force,

(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law

(4) Notwithstanding anything in this Constitution—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that house present and voting,

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and

no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368

#### 243N. Continuance of existing laws and Panchayats

Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature other competent authority or until the expiration of one year from such commencement whichever is earlier.

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State

#### 243O. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court,

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State

### PART IX A THE MUNICIPALITIES

#### 243P. Definitions

In this Part, unless the context otherwise requires,—

(a) 'Committee' means a Committee constituted under article 243S,

(b) 'district' means a district in a State,

(c) 'Metropolitan area' means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part,

(d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor,

(e) 'Municipality' means an institution of self-government constituted under Article 243Q,—

(f) 'Panchayat' means a Panchayat constituted under Article 243B,

(g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published

**243Q. Constitution of Municipalities**

(1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area

(b) a Municipal Council for a smaller urban area, and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part

**243R. Composition of Municipalities**

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

(i) persons having special knowledge or experience in Municipal administration,

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area,

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality,

(b) the manner of election of the Chairperson of a Municipality

**243S. Constitution and composition of wards Committees, etc.**

(1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more

(2) The Legislature of a State may, by law, make provision with respect to—

- (a) the composition and the territorial area of a Wards Committee,
- (b) the manner in which the seats in a Wards Committee shall be filled

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee

(4) Where a Wards Committee consists of—

- (a) one ward, the member representing that ward in the Municipality; or
  - (b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,
- shall be the Chairperson of that Committee

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees

#### 243T. Reservation of seats

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

**243U Duration of Municipalities, etc.**

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)

(3) An election to constitute a Municipality shall be completed,—

(a) before the expiry of its duration specified in clause (1),

(b) before the expiration of a period of six months from the date of its dissolution

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved

**243V. Disqualifications for membership**

(1) A person shall be disqualified for being chosen as, and for being a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years,

(b) if he is so disqualified by or under any law made by the Legislature of the State

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide

**243W. Powers, authority and responsibilities of Municipalities, etc**

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and

responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

- (i) the preparation of plans for economic development and social justice,
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule,
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

#### **243X. Power to impose taxes by, and funds, of, the Municipalities**

The Legislature of a State may, by law—

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits,

(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State, and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified in the law

#### **243Y. Finance Commission**

(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to—

(a) the principles which should govern—

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds,

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities,

(iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State,

(b) the measures needed to improve the financial position of the Municipalities,

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities

(2) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State

#### **243Z. Audit of accounts of Municipalities**

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts

#### **243ZA. Elections to the Municipalities**

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities

#### **243ZB. Application to Union territories**

The Provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification

#### **243ZC. Part not to apply to certain areas**

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368

#### **243ZD. Committee for district planning**

(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole

(2) The Legislative of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees,

(b) the manner in which the seats in such Committees shall be filled

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district,

(c) the functions relating to district planning which may be assigned to such Committees,

(d) the manner in which the Chairpersons of such Committees be chosen

(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrate development of infrastructure and environmental conservation,

(ii) the extent and type of available resources whether financial or otherwise,

(b) consult such institutions and organizations as the Governor may, by order, specify

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State

#### 243ZE. Committee for Metropolitan Planning

(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole

(2) The Legislature of a State may, by law, make with respect to—

(a) the composition of the Metropolitan Planning Committees,

(b) the manner in which the seats in such Committees shall be filled

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area,

(c) the representation, in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees,

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees,

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation,

(iii) the overall objectives and priorities set by the Government of India and the Government of the State,

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise,

(b) consult such institutions and organisations as the Governor may, by order, specify

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State

#### **243ZF. Continuance of existing laws and Municipalities**

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State

#### **243ZG. Bar to interference by courts in electoral matters**

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court,

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State

**PART X****THE SCHEDULED AND TRIBAL AREAS****244. Administration of Scheduled Areas and Tribal Areas**

(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

**244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor**

(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law

(2) Any such law as is referred to in clause (1) may, in particular,—

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise,

(b) define the matters with respect to which the executive power of the autonomous State shall extend,

(c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State,

(d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State, and

(e) make such supplemental, incidental and consequential provisions as may be deemed necessary

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and young

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution

**PART XI****RELATIONS BETWEEN THE UNION AND THE STATES****CHAPTER I****LEGISLATIVE RELATIONS***Distribution of Legislative Powers***245. Extent of laws made by Parliament and by the Legislatures of States**

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation

**246. Subject-matter of laws made by Parliament and by the Legislatures of States**

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List

**247. Power of Parliament to provide for the establishment of certain additional courts**

Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List

**248. Residuary powers of legislation**

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists

**249. Power of Parliament to legislate with respect to a matter in the State List in the national interest**

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein.

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period

**250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation**

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period

**251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States**

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative

**252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State**

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State

**253. Legislation for giving effect to international agreements**

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body

**254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

**255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only**

No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

(a) where the recommendation required was that of the Governor, either by the Governor or by the President,

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President,

(c) where the recommendation or previous sanction required was that of the President, by the President

**CHAPTER II****ADMINISTRATIVE RELATIONS***General***256. Obligation of States and the Union**

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose

**257. Control of the Union over States in certain cases**

(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any

railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State

**257A. Assistance to States by deployment of armed forces or other forces of the Union**

*[Rep by the Constitution (Forty-fourth Amendment) Act, 1978, sec 33 (w e f 20-6-1979) ]*

**258. Power of the Union to confer powers, etc., on States in certain cases**

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties

**258A. Power of the States to entrust functions to the Union**

Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

**259. Armed Forces in States in Part B of the First Schedule**

*[Rep by the Constitution (Seventh Amendment) Act, 1956, sec 29 and Sch. (w e f 1-11-1952) ]*

**260. Jurisdiction of the Union in relation to territories outside India**

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force

**261. Public acts, records and judicial proceedings**

Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law

*Disputes relating to Waters*

**262. Adjudication of disputes relating to waters of inter-State rivers or river valleys**

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)

*Co-ordination between States*

**263. Provisions with respect to an inter-State Council**

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest, or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure

**PART XII**

**FINANCE, PROPERTY, CONTRACTS AND SUITS**

**CHAPTER I**

**FINANCE**

*General*

**264. Interpretation**

In this Part, "Finance Commission" means a Finance Commission constituted under article 280

**65. Taxes not to be imposed save by authority of law**

No tax shall be levied or collected except by authority of law.

**266. Consolidated Funds and public accounts of India and of the States**

(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and money advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and money advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State"

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution

**267. Contingency Fund**

(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206

*Distribution of Revenues between the Union and the States***268. Duties levied by the Union but collected and appropriated by the States**

(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any Union territory, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State

#### 269. Taxes levied and collected by the Union but assigned to the States

(1) Taxes on the sales or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause

(2)

*Explanation*—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce,

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

(3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State or commerce

#### 270. Taxes levied and distributed between the Union and the States

(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2)

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such

manner and from such time as may be prescribed in the manner provided in clause (3)

(3) In this article, "prescribed" means—

(a) until a Finance Commission has been constituted, prescribed by the President by order, and

(b) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission,]

#### **271. Surcharge on certain duties and taxes for purposes of the Union**

Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

**272.** [Article 272 omitted by the Constitution (Eightieth Amendment) Act, 2000, sec 4 ]

#### **273. Grants in lieu of export duty on jute and jute products**

(1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution, whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270

#### **274. Prior recommendation of President required to Bills affecting taxation in which States are interested**

(1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to an Income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to State, or which imposes any surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President

(2) In this article, the expression "tax or duty in which States are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State, or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State

## 275. Grants from the Union to certain States

(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule, and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State

(1A) On and from the formation of the autonomous State under article 244A,—

(i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify,

(ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam

(2) Until provision is made by Parliament under clause (1), the power conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament.

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission

#### **276. Taxes on professions, trades, callings and employments**

(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments

#### **277. Savings**

Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

#### **278. Agreement with States in Part B of the First Schedule with regard to certain financial matters**

*[Rep by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch ]*

#### **279. Calculation of "net proceeds", etc.**

(1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or auxiliary matters.

#### 280. Finance Commission

(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

#### 281. Recommendations of the Finance Commission

The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

*Miscellaneous Financial Provisions***282. Expenditure defrayable by the Union or a State out of its revenues**

The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

**283. Custody, etc. of Consolidated Funds, Contingency Funds and moneys credited to the public accounts**

(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds, received by or on behalf of the Government of the State, their payment into the public account of the State and withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor of the State.

**284. Custody of suitors' deposits and other moneys received by public servants and courts**

All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons,

shall be paid into the public account of India or the public account of the State, as the case may be

**285. Exemption of property of the Union from State taxation**

(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any

property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State

## 286. Restrictions as to imposition of tax on the sale or purchase of goods

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State, or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify

## 287. Exemption from taxes on electricity

Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government, or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway.

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

**288. Exemption from taxation by States in respect of water or electricity in certain cases**

(1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any Inter-State river or river-valley

*Explanation.*—The expression "law of a State in force" in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President received his assent, and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order

**289. Exemption of property and income of a State from Union taxation**

(1) The property and income of a State shall be exempt from Union taxation

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government

**290. Adjustment in respect of certain expenses and pensions**

Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

(a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State, or

(b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India

#### **290A. Annual payment to certain Devaswom Funds**

A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund, and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu, every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin

#### **291. Privy purse sums of Rulers**

*[Rep by the Constitution (Twenty-sixth Amendment) Act, 1971, sec 2 ]*

### **CHAPTER II BORROWING**

#### **292. Borrowing by the Government of India**

The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed

#### **293. Borrowing by States**

(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to

the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose

### CHAPTER III

## PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

### 294. Succession to property, assets, rights, liabilities and obligations in certain cases

As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, West Punjab and East Punjab

### 295. Succession to property, assets, rights, liabilities and obligations in other cases

(1) As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List.

subject to any agreement entered into in that behalf by the Government of India with the Government of that State

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1)

**296. Property accruing by escheat or lapse or as *bona vacantia***

Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State

*Explanation*—In the article, the expressions "Ruler" and "Indian State" have the same meanings as in article 363

**297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union**

(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament

**298. Power to carry on trade, etc.**

The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose.

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State, and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament

**299. Contracts**

(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof

**300. Suits and proceedings**

(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

(2) If at the commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings, and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings

**CHAPTER IV****RIGHT TO PROPERTY**

**300A. Persons not to be deprived of property save by authority of law**  
No person shall be deprived of his property save by authority of law

**PART XIII****TRADE, COMMERCE AND INTERCOURSE WITHIN  
THE TERRITORY OF INDIA****301. Freedom of trade, commerce and intercourse**

Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free

**302. Power of Parliament to impose restrictions on trade, commerce and intercourse**

Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest

**303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce**

(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India

**304. Restrictions on trade, commerce and intercourse among States**

Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced, and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President

**305. Saving of existing laws and laws providing for State monopolies**

Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct, and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (u) of clause (6) of article 19

**306 Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce**

[Rep by the Constitution (Seventh Amendment) Act, 1956, sec 29 and Sch (w ef 1-11-1956)]

**307. Appointment of authority for carrying out the purposes of articles 301 to 304**

Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary

**PART XIV****SERVICES UNDER THE UNION AND THE STATES****CHAPTER I****SERVICES****308. Interpretation**

In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir

**309. Recruitment and conditions of service of persons serving the Union or a State**

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act

**310. Tenure of office of persons serving the Union or a State**

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deem it

necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post

**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final

**312. All-India Services**

(1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368

### **312A. Power of Parliament to vary or revoke conditions of service of officers of certain services**

(1) Parliament may by law—

(a) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects remuneration, leave and pension and the rights as respects disciplinary matters of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, continue on and after the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972, to serve under the Government of India or of a State in any service or post,

(b) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects pension of persons who, having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, retired or otherwise ceased to be in service at any time before the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972

Provided that in the case of any such person who is holding or has held the office of the Chief Justice or other Judge of the Supreme Court or a High Court, the Comptroller and Auditor-General of India, the Chairman or other members of the Union or a State Public Service Commission or the Chief Election Commissioner, nothing in sub-clause (a) or sub-clause (b) shall be construed as empowering Parliament to vary or revoke, after his appointment to such post, the conditions of his service to his disadvantage except in so far as such conditions of his service to his disadvantage except in so far as such conditions of service are applicable to him by reason of his being a person appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India

(2) Except to the extent provided for by Parliament by law under this article, nothing in this article shall affect the power of any Legislature or other authority under any other provision of this Constitution to regulate the conditions of service of persons referred to in clause (1)

(3) Neither the Supreme Court nor any other court shall have jurisdiction in—

(a) any dispute arising out of any provision of, or any endorsement on, any covenant, agreement or other similar instrument which was entered into or executed by any person referred to in clause (1), or arising out of any letter issued to such person, in relation to his appointment to any civil service of the Crown in India or his continuance in service under the Government of the Dominion of India or a Province thereof,

(b) any dispute in respect of any right, liability or obligation under article 314 as originally enacted

(4) The provisions of the article shall have effect notwithstanding anything in article 314 as originally enacted or in any other provision of this Constitution

### 313. Transitional provisions

Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution

### 314. Provision for protection of existing officers of certain services

*(Rep by the Constitution (Twenty-eighth Amendment) Act, 1972, sec 3 (w ef 29-8-1972) )*

## CHAPTER II

### PUBLIC SERVICE COMMISSION

#### 315. Public Service Commissions for the Union and for the States

(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question

### **316. Appointment and term of office of members**

(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier

Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office,

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office

**317. Removal and suspension of a member of a Public Service Commission**

(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(a) is adjudged an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour

**318. Power to make regulations as to conditions of service of members and staff of the Commission**

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations—

(a) determine the, number of members of the Commission and their conditions of service, and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment

**319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members**

On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State,

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State,

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State,

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State

**320. Functions of Public Service Commissions**

(1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the services of the Union and the services of the State respectively

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts,

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers,

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters,

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State,

in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State,

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid

### **321. Power to extend functions of Public Service Commissions**

An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution

### **322. Expenses of Public Service Commission**

The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State

**323. Reports of Public Service Commissions**

(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reason for such non-acceptance to be laid before each House of Parliament

(2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State

## **PART XIVA**

### **TRIBUNALS**

**323A. Administrative tribunals**

Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government

(2) A law made under clause (1) may,—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States,

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals,

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals,

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment,

(f) repeal or amend any order made by the President under clause (3) of article 371D,

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force

### **323B. Tribunals for other matters**

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws

(2) The matters referred to in clause (1) are the following, namely —

(a) levy, assessment, collection and enforcement of any tax,

(b) foreign exchange, import and export across customs frontiers,

(c) industrial and labour disputes,

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way,

(e) ceiling on urban property,

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A,

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods,

(h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants,

(i) offences against laws with respect to any of the matters specified in sub-clause (a) to (h) and fees in respect of any of those matters,

(j) any matter incidental to any of the matters specified in sub-clause (a) to (i)

(3) A law made under clause (1) may,—

(a) provide for the establishment of a hierarchy of tribunals,

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals,

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals,

(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals,

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment,

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force

*Explanation* —In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

## PART XV ELECTIONS

### 324. Superintendence, direction and control of elections to be vested in an Election Commission

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider

necessary to assist the Election Commission - in the performance of the functions conferred on the Commission by clause (1)

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1)

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them

326 Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election

327. Power of Parliament to make provision with respect to elections to Legislatures

Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses

### **328. Power of Legislature of a State to make provision with respect to elections to such Legislature**

Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses

### **329. Bar to interference by courts in electoral matters**

Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court,

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature

### **329A. Special provision as to elections to Parliament in the case of Prime Minister and Speaker**

*[Rep by the Constitution (Forty-fourth Amendment) Act, 1978, sec 36 (w e f 20-6-1979) ]*

## **PART XVI**

### **SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES**

### **330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People**

(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes,

(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam, and

(c) the Scheduled Tribes in the autonomous districts of Assam

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State

*Explanation*—In this article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census

### **331. Representation of the Anglo-Indian community in the House of the People**

Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the people, nominate not more than two members of that community to the House of the People

### **332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States**

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State

(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2000, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be—

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one,

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in existing Assembly

(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly, shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district

### **333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States**

Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate one member of that community to the Assembly

### **334. Reservation of seats and special representation to cease after fifty years**

Notwithstanding anything in the foregoing provisions of this Part, the provisions of Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States, and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of fifty years from the commencement of this Constitution

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be

**335. Claims of Scheduled Castes and Scheduled Tribes to services and posts**

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State

**336. Special provision for Anglo-Indian community in certain services**

(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities

**337. Special provision with respect to educational grants for the benefit of Anglo-Indian community**

During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of annual admissions therein are made available to members of communities other than the Anglo-Indian community

**338. Special Officer for Scheduled Castes and Scheduled Tribes, etc.**

(1) There shall be a special officer for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson

and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes,

(c) to participate and advise on the planning process of socio-economic development of the Schedule Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State,

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards,

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes, and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by the rule specify

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely —

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath,
- (b) requiring the discovery and production of any documents,
- (c) receiving evidence on affidavits,
- (d) requisitioning any public or copy thereof from any court or office,
- (e) issuing commissions for the examination of witnesses and documents,
- (f) any other matter which the President may by rule determine

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes

(10) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340 by order specify and also to the Anglo-Indian community

### **339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes**

(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable

(2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State

### **340. Appointment of a Commission to investigate the conditions of backward classes**

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament

**341. Scheduled Castes**

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

**342. Scheduled Tribes**

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

**PART XVII****OFFICIAL LANGUAGE****CHAPTER I****LANGUAGE OF THE UNION****343. Official language of the Union**

(1) The official language of the Union shall be Hindi in Devanagari script

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

- (a) the English language, or
- (b) the Devanagari form of numerals,

for such purposes as may be specified in the law

#### 344 Commission and Committee of Parliament on official language

(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union,

(b) restrictions on the use of the English language for all or any of the official purposes of the Union,

(c) the language to be used for all or any of the purposes mentioned in article 348,

(d) the form of numerals to be used for any one or more specified purposes of the Union,

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report

## CHAPTER II

### REGIONAL LANGUAGES

#### 345. Official language or languages of a State

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State Hindi as the language or languages to be used for all or any of the official purposes of that State

Provided that, until the Legislature of the State otherwise provides law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution

#### 346. Official language for communication between one State and another or between a State and the Union

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication

#### 347. Special provision relating to language spoken by a section of the population of a State

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised throughout that State or any part thereof for such purpose as he may specify

## CHAPTER III

### LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

#### 348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

(1) Notwithstanding anything in the foregoing provisions of this Part until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this

Constitution or under any law made by Parliament or the Legislature of a State,  
shall be in the English language

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (ii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article

#### **349. Special procedure for enactment of certain laws relating to language**

During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article

### **CHAPTER IV SPECIAL DIRECTIVES**

#### **350 Language to be used in representations for redress of grievances**

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be

#### **350A. Facilities for instruction in mother-tongue at primary stage**

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities

**350B. Special Officer for linguistic minorities**

(1) There shall be a Special Officer for linguistic minorities to be appointed by the President

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned

**351. Directive for development of the Hindi language**

It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages

**PART XVIII****EMERGENCY PROVISIONS****352. Proclamation of Emergency**

(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation

*Explanation* —A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof

(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank under article 75) that such a Proclamation may be issued has been communicated to him in writing

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (4)

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the proclamation has been also passed by the House of the People

(6) For the purpose of clause (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session, or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or as the case may be, by the President, for the purpose of considering such resolution

(9) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion or imminent danger of war or external aggression or armed rebellion, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation

### **353. Effect of Proclamation of Emergency**

While a Proclamation of Emergency is in operation, then—

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised,

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List,

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b),

shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

### **354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation**

(1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament

### **355. Duty of the Union to protect States against external aggression and internal disturbance**

It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution

## Article 356]

**356. Provisions in case of failure of constitutional machinery in State**

(1) If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State,

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament,

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation

(3) Every Proclamation issued under this article except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People

Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to five years

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless—

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab

### **357 Exercise of legislative powers under Proclamation issued under article 356**

(1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf,

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof,

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority

### **358. Suspension of provisions of article 19 during emergencies**

(1) While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect

Provided that where such Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation

(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made, or

(b) to any executive action taken otherwise than under a law containing such a recital

### **359. Suspension of the enforcement of the rights conferred by Part III during emergencies**

(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order

(1A) While an order made under clause (1) mentioning any of the rights conferred by Part III (except articles 20 and 21) is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions containing in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation

(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made, or

(b) to any executive action taken otherwise than under a law containing such a recital

(2) An order made as aforesaid may extend to the whole or any part of the territory of India

Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary

(3) Every order made under clause (1) shall, as soon may be after it is made, be laid before each House of Parliament

### 359A. Application of this Part to the State of Punjab

*[Rep by the Constitution (Sixty-third Amendment) Act, 1989, sec 3 (w e f 6-1-1990) ]*

### 360. Provisions as to financial emergency

(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect

(2) A Proclamation issued under clause (1)

(a) may be revoked or varied by a subsequent Proclamation,

(b) shall be laid before each House of Parliament,

(c) shall cease to operate at the expiration of two months unless

before the expiration of that period it has been approved by resolutions of both Houses of Parliament

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State,

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State,

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts

## PART XIX

### MISCELLANEOUS

#### 361. Protection of President and Governors and Rajpramukhs

(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall be issued from any court during his term of office

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims

### **361A. Protection of publication of proceedings of Parliament and State Legislature**

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper

*Explanation*—In this article, "newspaper" includes a news agency report containing material for publication in a newspaper

### **362 Rights and privileges of Rulers of Indian States**

*[Rep by the Constitution (Twenty-sixth Amendment) Act, 1971, sec 2]*

### **363 Bar to interference by courts in disputes arising out of certain treaties, agreements, etc**

(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or

in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument

(2) In this article—

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State, and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State

**363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished**

Notwithstanding anything in this Constitution or in any law for the time being in force—

(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler,

(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as privy purse

**364. Special provisions as to major ports and aerodromes**

(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification

(2) In this article—

(a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port,

(b) "aerodrome" means aerodrome as defined for the purposes of the enactment's relating to airways, aircraft and air navigation

### **365. Effect of failure to comply with, or to give effect to, directions given by the Union**

Where any State has failed to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution

### **366. Definitions**

In this Constitution, unless the context otherwise requires, the following expressions have, the meanings hereby respectively assigned to them, that is to say—

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax,

(2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only,

(3) "article" means an article of this Constitution,

(4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly,

(5) "clause" means a clause of the article in which the expression occurs,

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled —

(a) that it is not chargeable in respect of agricultural income,

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals,

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals,

(7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question,

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuity and any liability under any guarantee, and "debt charges" shall be construed accordingly,

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass,

(10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation,

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935,

(12) "goods" includes all materials, commodities, and articles,

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount,

(14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(a) any court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(b) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution,

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State,

(16) "Part" means a part of this Constitution,

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund,

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352,

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State,

(20) "railway" does not include—

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway,

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(22) "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth

Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler,

(23) "Schedule" means a Schedule to this Constitution,

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution,

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution,

(26) "securities" includes stock,

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs,

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly,

(29) "tax on income" includes a tax in the nature of an excess profits tax,

(29A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration,

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract,

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments,

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration,

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made,

(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule

**367. Interpretation**

(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor, as the case may be

(3) For the purposes of this Constitution "foreign State" means any State other than India

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order

**PART XX****AMENDMENT OF THE CONSTITUTION****368. Power of Parliament to amend the Constitution and procedure therefor**

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill

Provided that if such amendment seeks to make any change in—

- (a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislature of not less than one-half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent

(3) Nothing in article 13 shall apply to any amendment made under this article

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article

## PART XXI

### TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

**369. Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List**

Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely —

(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica,

(b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court,

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof

**370. Temporary provisions with respect to the State of Jammu and Kashmir**

(1) Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir,

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of

Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

*Explanation*—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State,

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State.

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification

**371. Special provision with respect to the States of Maharashtra and Gujarat**

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(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Maharashtra or Gujarat, provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be, Saurashtra, Kutch and the Gujarat with the provision that a report on the working of each of rest of these boards will be placed each year before the State Legislative Assembly,

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole, and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole

**371A. Special provision with respect to the State of Nagaland**

(1) Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides,

(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills—Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order,

(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand,

(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—

(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman *ex officio* of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves,

(ii) the qualifications for being chosen as, and for being, members of the regional council,

(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council,

(iv) the procedure and conduct of business of the regional council,

(v) the appointment of officers and staff of the regional council and their conditions of services, and

(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council

(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,—

(a) the administration of the Tuensang district shall be carried on by the Governor,

(b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State,

(c) no Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council

Provided that any direction given under this sub-clause may be given so as to have retrospective effect,

(d) the Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district,

(e) (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid,

(ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same,

(f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion,

(g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article,

(h) in article 170—

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word “sixty”, the words “forty-six” had been substituted,

(ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article,

(iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland

*Explanation*—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962

### **371B. Special provision with respect to the State of Assam**

Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee

**371C. Special provision with respect to the State of Manipur**

(1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas

*Explanation*—In this article, the expression "Hill Areas" means such areas as the President may, by order, declare to be Hill Areas

**371D. Special provisions with respect to the State of Andhra Pradesh**

(1) The President may, by order made with respect to the State of Andhra Pradesh, provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State

(2) An order made under clause (1) may, in particular,—

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under the State into different local cadres for different parts of the State and allot in accordance with such principal and procedure as may be specified in the order the persons holding such post to the local cadres so organised,

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government,

(ii) for direct recruitment to posts in any cadre under any local authority within the State, and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government,

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order,

(u) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be

(3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority as may be specified in the order with respect to the following matters, namely —

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order,

(b) seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order,

(c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of civil posts in any civil service of the State, or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order

(4) An order made under clause (3) may—

(a) authorise the Administrative Tribunal to receive representations for the redress of grievances relating to any matter within its jurisdiction as the President may specify in the order and to make such orders thereon as the Administrative Tribunal deems fit,

(b) contain such provisions with respect to the powers and authorities and procedure of the Administrative Tribunal (including provisions with respect to the powers of the Administrative Tribunal to punish for contempt of itself) as the President may deem necessary,

(c) provide for the transfer of the Administrative Tribunal of such classes of proceedings, being proceedings relating to matters within its jurisdiction and pending before any court (other than the Supreme Court) or tribunal or other authority immediately before the commencement of such order, as may be specified in the order,

(d) contain such supplemental, incidental and consequential provisions (including provisions as to fees and as to limitation, evidence

or for the application of any law for the time being in force subject to any exceptions or modifications) as the President may deem necessary

(5) The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be

(6) Every special order made by the State Government under the proviso to clause (5) shall be laid, as soon as may be after it is made, before both Houses of the State Legislature

(7) The High Court for the State shall not have any powers of superintendence over the Administrative Tribunal and no court (other than the Supreme Court) or tribunal shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal

(8) If the President is satisfied that the continued existence of the Administrative Tribunal is not necessary, the President may by order abolish the Administrative Tribunal and make such provisions in such order as he may deem fit for the transfer and disposal of cases pending before the Tribunal immediately before such abolition

(9) Notwithstanding any judgment, decree or order of any court, tribunal or other authority,—

(a) no appointment, posting, promotion or transfer of any person—

(i) made before the 1st day of November, 1956, to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date, or

(ii) made before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within, the State of Andhra Pradesh, and

(b) no action taken or thing done by or before any person referred to in sub-clause (a), shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that the appointment, posting, promotion or transfer of such person was not made in accordance with any law, then in force, providing for any requirement as to residence within the State of Hyderabad or, as the case may be, within any part of the State of Andhra Pradesh, in respect of such appointment, posting, promotion or transfer

(10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force

**371E. Establishment of Central University in Andhra Pradesh**

Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh

**371F. Special provisions with respect to the State of Sikkim**

Notwithstanding anything in this Constitution,—

(a) the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members,

(b) as from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 (hereafter in this article referred to as the appointed day)—

(i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections) hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution,

(ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution, and

(iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution,

(c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of five years in clause (1) of article 172 shall be construed as references to a period of four years and the said period of four years shall be deemed to commence from the appointed day,

(d) until other provisions are made by Parliament by law, there shall be allotted to the State of Sikkim one seat in the House of People and the State of Sikkim shall form one Parliamentary constituency to be called the Parliamentary constituency for Sikkim,

(e) the representative of the State of Sikkim in the House of the people in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim,

(f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim,

(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of

Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his direction,

(h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim,

(i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to be the High Court for the State of Sikkim,

(j) all courts of civic, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provision of this Constitution,

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority,

(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law,

(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143,

(n) the president may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification,

(o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order, do anything (including any adaptation or modification of any other article) which

appears to him to be necessary for the purpose of removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the appointed day,

(p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-sixth Amendment) Act, 1975, received the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended

### **371G. Special provision with respect to the State of Mizoram**

Notwithstanding in this Constitution,—

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Mizos,

(ii) Mizoram customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Mizoram customary law,

(iv) ownership and transfer of land,

shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides

Provided that nothing in this clause shall apply to any Central Act in force in the Union Territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986,

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members

### **371H. Special provision with respect to the State of Arunachal Pradesh**

Notwithstanding anything in this Constitution—

(a) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order,

(b) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members

**371-I. Special provision with respect to the State of Goa**

Notwithstanding anything in this Constitution, the Legislative Assembly of the State of Goa shall consist of not less than thirty members

**372. Continuance in force of existing laws and their adaptation**

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution, or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause

*Explanation I*—The expression 'law in force' in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas

*Explanation II*—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect

*Explanation III*—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force

*Explanation IV*—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period

### **372A. Power of the President to adapt laws**

(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the first day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law

(2) Nothing in clause (1) shall be deemed to prevent a competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause

### **373. Power of President to make order in respect of persons under preventive detention in certain cases**

Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President

### **374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council**

(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear

and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article

**375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution**

All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution

**376. Provisions as to Judges of High Courts**

(1) Notwithstanding anything in clause (2) of article 217, the Judges of High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court. Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article,

continue to hold office until the expiration of such period as the President may by order determine

(3) In this article, the expression 'Judge' does not include an acting Judge or an additional Judge

### **377. Provisions as to Comptroller and Auditor-General of India**

The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) or article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement

### **378. Provisions as to Public Service Commissions**

(1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Corresponding State or the members of the Joint State Public Service Commission serving the needs of the Corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members

### **378A. Special provisions as to duration of Andhra Pradesh Legislative Assembly**

Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of section 28 and 29 of the State Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly

[379-391 —*Rep by the Constitution (Seventh Amendment) Act, 1956, sec 29 and Sch (w e f 1-11-1956)* ]

**392. Power of the President to remove difficulties**

(1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by any of modification, addition or omission, as he may deem to be necessary or expedient

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V

(2) Every order made under clause (1) shall be laid before Parliament

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of the Constitution, be exercisable by the Governor-General of the Dominion of India

**PART XXII****SHORT TITLE, COMMENCEMENT, AUTHORITATIVE TEXT IN HINDI AND REPEALS****393 Short title**

This Constitution may be called the Constitution of India

**394. Commencement**

This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution

**394A Authoritative text in the Hindi language**

(1) The President shall cause to be published under his authority—

(a) the translation of this Constitution in the Hindi language signed by members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of this Constitution made before such publication, and

(b) the translation in the Hindi language of every amendment of this Constitution made in the English language

(2) The translation of this Constitution and of every amendment thereof published under clause (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably

(3) The translation of this Constitution and of every amendment thereof published under this Article shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language

### **395. Repeals**

The Indian Independence Act, 1947 and the Government of India Act 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949 are hereby repealed

**FIRST SCHEDULE**

(Articles 1 and 4)

**I. THE STATES**

Name	Territories
1 Andhra Pradesh	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953, sub-section (1) of section 3 of the States Reorganisation Act, 1956, the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, and the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968, but excluding the territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959
2 Assam	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951, and the territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962 and the territories specified in sections 5, 6 and 7 of the North-Eastern Areas (Reorganisation) Act, 1971
3 Bihar	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province and the territories specified in clause (1) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, and the territories specified in clause (b) of sub-section (1) of section 3 of the first mentioned Act
4 Gujarat	The territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960
5 Kerala	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956
6 Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956 and the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959

**7 Tamil Nadu**

The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, and the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 and the territories specified in the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959

**8 Maharashtra**

The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956, but excluding the territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960

**9 Karnataka**

The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956 but excluding the territory specified in the Schedule to the Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968

**10 Orissa**

The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province

**11. Punjab**

The territories specified in section 11 of the States Reorganisation Act, 1956 and the territories referred to in Part II of the First Schedule to the Acquired Territories (Merger) Act, 1960 but excluding the territories referred to in Part II of the First Schedule to the Constitution (Ninth Amendment) Act, 1960 and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966

**12 Rajasthan**

The territories specified in section 10 of the States Reorganisation Act, 1956 but excluding the territories specified in the First Schedule to the

**Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959**

**13 Uttar Pradesh**

The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province, the territories specified in clause (b) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (b) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (a) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979

**14 West Bengal**

The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province in the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954, and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956

**15 Jammu and Kashmir**

The territory which immediately before the commencement of this Constitution are comprised in the Indian State of Jammu and Kashmir

**16 Nagaland**

The territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962

**17 Haryana**

The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979, but excluding the territories specified in clause (b) of sub-section (1) of section 4 of that Act

**18 Himachal Pradesh**

The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh

- and Bilaspur and the Territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966
- 19 Manipur The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur
- 20 Tripura The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura
- 21 Meghalaya The territories specified in section 5 of the North-Eastern Areas (Reorganisation) Act, 1971
- 22 Sikkim The territories which immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, were comprised in Sikkim
- 23 Mizoram The territories specified in section 6 of the North Eastern Areas (Reorganisation) Act, 1971
- 24 Arunachal Pradesh The territories specified in section 7 of the North Eastern Areas (Reorganisation) Act, 1971
- 25 Goa The territories specified in section 3 of the Goa, Daman and Diu Reorganisation Act, 1987

## II. THE UNION TERRITORIES

- 1 Delhi The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi
- 2 The Andaman and Nicobar Islands The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands
- 3 Lakshadweep The territory specified in section 6 of the States Reorganisation Act, 1956
- 4 Dadra and Nagar The territory which immediately before the eleventh day of August, 1961 was comprised in Free Dadra and Nagar Haveli
- 5 Daman and Diu The territories specified in section 4 of the Goa, Daman and Diu Reorganisation Act, 1987
- 6 Pondicherry The territories which immediately before the sixteenth day of August, 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam
- 7 Chandigarh The territories specified in section 4 of the Punjab Reorganisation Act, 1966

## SECOND SCHEDULE

[Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221 ]

## PART A

## PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES

1 There shall be paid to the President and to the Governors of the States the following emoluments per mensem, that is to say --

The President	10,000 rupees*
The Governor of a State	5,500 rupees**

2 There shall also be paid to the President and to the Governors of the States such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution

3 The President and the Governors of the States throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution

4 While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be

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## PART C

## PROVISIONS AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCIL OF A STATE

7 There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement

8 There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council of a State such salaries and allowances as were payable

\* 30,000 rupees w.e.f. 1-1-1996

\*\* 35,000 rupees w.e.f. 1-1-1996

respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine

#### PART D

#### PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS

9 (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say —

The Chief Justice	10,000 rupees*
Any other Judge	9,000 rupees**

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution,—

(a) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374, or

(b) was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and

\* 33,000 rupees w e f 1-1-1996

\*\* 30,000 rupees w e f 1-1-1996

every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court

10 (1) There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say,

The Chief Justice

9,000 rupees\*

Any other Judge

8,000 rupees\*\*

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity

(2) Every person who immediately before the commencement of this Constitution—

(a) was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of article 376, or

(b) was holding office as any other Judge of a High Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,

\* 30,000 rupees w e f 1-1-1996.

\*\* 26,000 rupees w e f 1-1-1996

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement

(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph

11 In this Part, unless the context otherwise requires—

(a) the expression 'Chief Justice' includes an acting Chief Justice, and a 'Judge' includes an *ad hoc* Judge,

(b) 'actual service' includes—

(i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge,

(ii) vacations, excluding any time during which the Judge is absent on leave, and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another

#### PART E

#### PROVISIONS AS TO THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA

12 (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem\*

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be

\* 30,000 rupees w e f 1-1-1996

governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President

**THIRD SCHEDULE**

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 2191]

**Forms of Oaths or Affirmations****I****Form of oath of office for a Minister for the Union**

"I, A B , do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will "

**II****Form of oath of secrecy for a Minister for the Union**

"I, A B , do swear in the name of God solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister '

**III****A****Form of oath or affirmation to be made by a candidate for election to Parliament**

"I, A B , having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India "

**B****Form of oath or affirmation to be made by a member of Parliament**

"I, A B , having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter "

**IV****Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India**

"I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God

solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws "

## V

Form of oath of office for a Minister for a State

"I, A.B., do swear in the name of God  
solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of . and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will "

## VI

Form of oath of secrecy for a Minister for a State

"I, A.B., do swear in the name of God  
solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State of . except as may be required for the due discharge of my duties as such Minister "

## VII

## A

Form of oath or affirmation to be made by a candidate for election to the Legislature of a State

"I, A.B., having been nominated as a candidate to fill a seat in Legislative Assembly (or Legislative Council), do swear in the name of God  
solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India "

## B

Form of oath or affirmation to be made by a member of the Legislature of a State

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God  
solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law

established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter "

#### VIII

**Form of oath or affirmation to be made by the Judges of a High Court**

"I, A B , having been appointed Chief Justice (or a Judge) of the High Court  
swear in the name of God  
at (or of) . . do solemnly affirm that I will bear true faith and  
allegiance to the Constitution of India as by law established, that I will uphold  
the sovereignty and integrity of India, that I will duly and faithfully and to the  
best of my ability, knowledge, and judgment perform the duties of my office  
without fear or favour, affection or ill-will and that I will uphold the  
Constitution and the laws."

**FOURTH SCHEDULE****[Articles 4(1) and 80(2)]****Allocation of seats in the Council of States**

For each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be

**TABLE**

1 Andhra Pradesh	18
2 Assam	7
3 Bihar	22
4 Goa	1
5 Gujarat	11
6 Haryana	5
7 Kerala	9
8 Madhya Pradesh	16
9 Tamil Nadu	18
10 Maharashtra	19
11 Karnataka	12
12 Orissa	10
13 Punjab	7
14 Rajasthan	10
15 Uttar Pradesh	34
16 West Bengal	16
17 Jammu and Kashmir	4
18 Nagaland	1
19 Himachal Pradesh	3
20 Manipur	1
21 Tripura	1
22 Meghalaya	1
23 Sikkim	1
24 Mizoram	1
25 Arunachal Pradesh	1
26 Delhi	3
27 Pondicherry	1

**Total 233**

**FIFTH SCHEDULE***[Article 244(1)]***Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes****PART A****GENERAL****1. Interpretation**

In this Schedule, unless the context otherwise requires, the expression 'State' does not include the States of Assam · Meghalaya, Tripura and Mizoram

**2. Executive power of a State in Scheduled Areas**

Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein

**3. Report by the Governor to the President regarding the administration of Scheduled Areas**

The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas

**PART B****ADMINISTRATION AND CONTROL OF SCHEDULED AREAS  
AND SCHEDULED TRIBES****4. Tribes Advisory Council**

(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State

*Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes*

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor

(3) The Governor may make rules prescribing or regulating, as the case may be,—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,

- (b) the conduct of its meetings and its procedure in general, and
- (c) all other incidental matters

#### 5. Law applicable to Scheduled Areas

(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area,

(b) regulate the allotment of land to members of the Scheduled Tribes in such area,

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect

(5) No regulation shall be made under this paragraph unless the Government making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council

### PART C

#### SCHEDULED AREAS

#### 6 Scheduled Areas

(1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas

(2) The President may at any time by order—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area,

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State,

(b) alter, but only by way of recalculation of boundaries, any Scheduled Area,

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area,

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are as to be Scheduled Areas,

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order

#### *PART D*

#### **AMENDMENT OF THE SCHEDULE**

##### **7. Amendment of the Schedule**

(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368

**SIXTH SCHEDULE**

[Articles 244(2) and 275(1)]

**Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram****1. Autonomous districts and autonomous regions**

(1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions —

(3) The Governor may, by public notification,

(a) include any area in any of the Parts of the said table,

(b) exclude any area from any of the Parts of the said table,

(c) create a new autonomous district,

(d) increase the area of any autonomous district,

(e) diminish the area of any autonomous district,

(f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(ff) alter the name of any autonomous district,

(g) define the boundaries of any autonomous district

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order

**2. Constitution of District Councils and Regional Councils**

(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of 'the District Council of (name of district)' and 'the Regional Council of (name of region)', shall have perpetual succession and a common seal and shall by the said name sue and be sued

(4) Subject to the provisions of this Schedule, the administration of autonomous district shall, in so far as it is not vested under this Schedule any Regional Council within such district, be vested in the District Council such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(a) the composition of the District Councils and Regional Councils and the allocation of seats therein,

(b) the delimitation of territorial constituencies for the purpose of elections to those Councils,

(c) the qualifications for voting at such elections and the preparation of electoral rolls therefor,

(d) the qualifications for being elected at such elections as members of such Councils,

(e) the term of office of members of Regional Councils,

(f) any other matter relating to or connected with elections and nominations to such Councils,

(g) the procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional Councils,

(h) the appointment of officers and staff of the District and Regional Councils

(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is soon after dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces

(7) The District or the Regional Council may after its first constitution make rules with the approval of the Governor with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules with like approval regulating

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business, and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council

### 3. Powers of the District Councils and Regional Councils to make laws

(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition,

(b) the management of any forest not being a reserved forest,

(c) the use of any canal or water-course for the purpose of agriculture,

(d) the regulation of the practice of *jhum* or other forms of shifting cultivation,

(e) the establishment of village or town committees or councils and their powers,

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation,

(g) the appointment or succession of Chiefs or Headmen,

(h) the inheritance of property,

(i) marriage and divorce,

(j) social customs

(2) In this paragraph, a 'reserved forest' means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect

#### **4. Administration of justice in autonomous districts and autonomous regions**

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases

(3) The High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

(a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph,

(b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph,

(c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph,

(d) the enforcement of decisions and orders of such Councils and courts,

(e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph

(5) On and from such date as the President may, after consulting the Government of the State concerned, by notification appoint in this behalf, this

paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—

(i) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply," the words "not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf," had been substituted,

(ii) sub-paragraphs (2) and (3) had been omitted,

(iii) in sub-paragraph (4)—

(a) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating", the words "the Governor may make rules regulating" had been substituted, and

(b) for clause (a), the following clause had been substituted, namely

"(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie,"

(c) for clause (c), the following clause had been substituted, namely

"(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5)," and

(d) in clause (e), for the words, brackets and figures "sub-paragraphs (1) and (2)", the word, brackets and figure "sub-paragraph (1)" had been substituted

**5 Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences**

(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply

(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph

#### **6. Powers of the District Council to establish primary schools, etc**

(1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends

#### **7. District and Regional Funds**

(1) There shall be constituted for each autonomous district, a District Fund for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution

(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think

fit, and the reports of the Comptroller and Auditor General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council

#### **8. Powers to assess and collect land revenue and to impose taxes**

(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons, resident within such areas

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say,—

- (a) taxes on professions, trades, callings and employments,
- (b) taxes on animals, vehicles and boats,
- (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries, and
- (d) taxes for the maintenance of schools, dispensaries or roads

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect

#### **9. Licences or leases for the purpose of prospecting for, or extraction of, minerals**

(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final

# **10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals**

(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending,

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender,

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council,

(d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of making of such regulations

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect

# **11. Publication of laws, rules and regulations made under the Schedule**

All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law

# **12. Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam**

(1) Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Assam in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in the State unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the

District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit,

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State of Assam to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect

**12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya**

Notwithstanding anything in this Constitution,—

(a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail,

(b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect

**12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous district and autonomous regions in the State of Tripura**

Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that State unless, in either case, the District Council for that district or having

jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act direct that the Act shall, in its application to that district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit,

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to the autonomous district or an autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification,

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect

**12B. Application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous districts and autonomous regions in the State of Mizoram**

Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit,

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification,

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect

**13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement**

The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202

**14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions**

(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts and regions,

(b) the need for any new or special legislation in respect of such districts and regions, and

(c) the administration of the laws, rules and regulations made by the District and Regional Councils,

and define the procedure to be followed by such Commission

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State

**15. Annulment or suspension of acts and resolutions of District and Regional Councils**

(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India or is likely to be prejudicial to public order, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked

by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate

#### **16. Dissolution of a District or a Regional Council**

(1) The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State

(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the orders, unless, before the expiry of that period it has been approved by the State Legislature

**17. Exclusion of areas from autonomous districts in forming constituencies in such districts**

For the purposes of elections to the Legislative Assembly of Assam or Meghalaya or Tripura or Mizoram, the Governor may by order declare that any area within an autonomous district in the State of Assam or Meghalaya or Tripura or Mizoram, as the case may be, shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order

**19. Transitional provisions**

(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely —

(a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit,

(b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect

**20. Tribal areas**

(1) The areas specified in Parts I, II, IIA and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram

(2) Any reference in Part I, Part II or Part III of the table below to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971

Provided that for the purposes of clauses (c) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b), and (d) of sub-paragraph (3) and sub-paragraph (4) of

paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District

(3) The reference in Part IIA in the table below to the 'Tripura Tribal Areas District' shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979

#### TABLE

##### PART I

- 1 The North Cachar Hills District
- 2 The Karbi Anglong District

##### PART II

- 1 Khasi Hills District
- 2 Jaintia Hills District
- 3 The Garo Hills District

##### PART IIA

Tripura Tribal Areas District

##### PART III

- 1 The Chakma District
- 2 The Mara District
- 3 The Lai District.

#### 20A. Dissolution of the Mizo District Council

(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist

(2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely —

(a) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority,

(b) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party,

(c) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment,

(d) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such

adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority,

(c) such incidental, consequential and supplementary matters as the Administrator considers necessary.

*Explanation*—In this paragraph and in paragraph 20B of this Schedule, the expression 'prescribed date' means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963

**20B. Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto**

(1) Notwithstanding anything in this Schedule,—

(a) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly,

(b) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council)

(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule

(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram

(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely—

(a) the transfer in whole or in part of the assets rights and liabilities of

the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council,

(b) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party,

(c) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment,

(d) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority,

(e) such incidental, consequential and supplementary matters as the Administrator considers necessary

## 20C Interpretation

Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—

(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression 'Government of the State') were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram,

(2) as if—

(a) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted,

(b) in sub-paragraph (2) of paragraph 6, for the words 'to which the executive power of the State extends', the words 'with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws' had been substituted,

(c) in paragraph 13, the words and figures 'under article 202' had been omitted

## 21. Amendment of the Schedule

(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368

**SEVENTH SCHEDULE**

(Article 246)

**List I—Union List**

1 Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilisation

2 Naval, military and air forces, any other armed forces of the Union

2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power, powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment

3 Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas

4 Naval, military and air force works

5 Arms, firearms, ammunition and explosives

6 Atomic energy and mineral resources necessary for its production

7 Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war

8 Central Bureau of Intelligence and Investigation

9 Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India, persons subjected to such detention

10 Foreign affairs, all matters which bring the Union into relation with any foreign country

11 Diplomatic, consular and trade representation

12 United Nations Organisation

13 Participation in international conferences, associations and other bodies and implementing of decisions made thereat

14 Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries

15 War and peace

16 Foreign jurisdiction

17 Citizenship, naturalisation and aliens

18 Extradition

19 Admission into, and emigration and expulsion from, India, passports and visas

20 Pilgrimages to places outside India

21 Piracies and crimes committed on the high seas or in the air, offences against the law of nations committed on land or the high seas or in the air

22 Railways

23 Highways declared by or under law made by Parliament to be national highways

24 Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels, the rule of the road on such waterways

25 Maritime shipping and navigation, including shipping and navigation on tidal waters, provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies

26 Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft

27 Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation and the constitution and powers of port authorities therein

28 Port quarantine, including hospitals connected therewith, seamen's and marine hospitals

29 Airways, aircraft and air navigation, provision of aerodromes, regulation and organisation of air traffic and of aerodromes, provision for aeronautical education and training and regulation of such education and training provided by States and other agencies

30 Carnage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels

31 Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication

32 Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides

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34 Courts of wards for the estates of Rulers of Indian States

35 Public debt of the Union

36 Currency, coinage and legal tender, foreign exchange

37 Foreign loans

38 Reserve Bank of India

39 Post Office Savings Bank

40 Lotteries organised by the Government of India or the Government of a State

41 Trade and commerce with foreign countries, import and export across customs frontiers, definition of customs frontiers

42 Inter-State trade and commerce

43 Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies

44 Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities

45 Banking

46 Bills of exchange, cheques, promissory notes and other like instruments

47 Insurance

48 Stock exchanges and futures markets

49 Patents, inventions and designs, copyright, trade-marks and merchandise marks

50 Establishment of standards of weight and measure

51 Establishment of standards of quality for goods to be exported out of India or transported from one State to another

52 Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest

53 Regulation and development of oil fields and mineral oil resources, petroleum and petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable

54 Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest

55 Regulation of labour and safety in mines and oilfields

56 Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest

57 Fishing and fisheries beyond territorial waters

58 Manufacture, supply and distribution of salt by Union agencies, regulation and control of manufacture, supply and distribution of salt by other agencies

59 Cultivation, manufacture, and sale for export, of opium

60 Sanctioning of cinematograph films for exhibition

61 Industrial disputes concerning Union employees

62 The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance

63 The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University, the University established in pursuance of article 371E, any other institution declared by Parliament by law to be an institution of national importance

64 Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance

65 Union agencies and institutions for—

(a) professional, vocational or technical training, including the training of police officers, or

(b) the promotion of special studies or research, or

(c) scientific or technical assistance in the investigation or detection of crime

66 Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions

67 Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance

68 The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India, Meteorological organisations

69 Census

70 Union Public Services, All-India Services, Union Public Service Commission

71 Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India

72 Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President, the Election Commission

73 Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People

74 Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House, enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament

75 Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors, salaries and allowances of the Ministers for the Union, the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General

76 Audit of the accounts of the Union and of the States

77 Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein, persons entitled to practise before the Supreme Court

78 Constitution and Organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts, persons entitled to practise before the High Courts

79 Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory

80 Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated, extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State

81 Inter-State migration, inter-State quarantine

82 Taxes on income other than agricultural income

83 Duties of customs including export duties

84 Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry

85 Corporation tax

86 Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies

87 Estate duty in respect of property other than agricultural land

88 Duties in respect of succession to property other than agricultural land

89 Terminal taxes on goods or passengers, carried by railway, sea or air, taxes on railway fares and freights

90 Taxes other than stamp duties on transactions in stock exchanges and futures markets

91 Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts

92 Taxes on the sale or purchase of newspapers and on advertisements published therein

92A Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce

92B Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce

93 Offences against laws with respect to any of the matters in this List

94 Inquiries, surveys and statistics for the purpose of any of the matters in this List

95 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List, admiralty jurisdiction

96 Fees in respect of any of the matters in this List, but not including fees taken in any court

97 Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists

### **List II—State List**

1 Public order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

2 Police (including railway and village police) subject to the provisions of entry 2A of List I

3 Officers and servants of the High Court, procedure in rent and revenue courts, fees taken in all courts except the Supreme Court

4 Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other States for the use of prisons and other institutions

5 Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration

6 Public health and sanitation, hospitals and dispensaries

7 Pilgrimages, other than pilgrimages to places outside India

8 Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors

9 Relief of the disabled and unemployable

10 Burials and burial grounds, cremations and cremation grounds

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12 Libraries, museums and other similar institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance

13 Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways, vehicles other than mechanically propelled vehicles

14 Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases

15 Preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice

16 Pounds and the prevention of cattle trespass

17 Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I

18 Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans, colonization

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21 Fisheries.

22 Courts of wards subject to the provisions of entry 34 of List I, encumbered and attached estates

23 Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union

24 Industries subject to the provisions of entries 7 and 52 of List I

25 Gas and gas-works

26 Trade and commerce within the State subject to the provisions of entry 33 of List III

27 Production, supply and distribution of goods subject to the provisions of entry 33 of List III

28 Markets and fairs.

30. Money-lending and money-lenders, relief of agricultural indebtedness

31 Inns and inn-keepers

32 Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities, unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies

33 Theaters and dramatic performances, cinemas subject to the provisions of entry 60 of List I, sports, entertainments and amusements

34 Betting and gambling

35 Works, lands and buildings vested in or in the possession of the State

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37 Elections to the Legislature of the State subject to the provisions of any law made by Parliament

38 Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof

39 Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof, enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State

- 40 Salaries and allowances of Ministers for the State
- 41 State public services, State Public Service Commission
- 42 State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State
- 43 Public debt of the State
- 44 Treasure trove
- 45 Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues
- 46 Taxes on agricultural income
- 47 Duties in respect of succession to agricultural land
- 48 Estate duty in respect of agricultural land
- 49 Taxes on lands and buildings
- 50 Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
- 51 Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India
  - (a) alcoholic liquors for human consumption,
  - (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry
- 52 Taxes on the entry of goods into a local area for consumption, use or sale therein
- 53 Taxes on the consumption or sale of electricity
- 54 Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I
- 55 Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television
- 56 Taxes on goods and passengers carried by road or on inland waterways
- 57 Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III
- 58 Taxes on animals and boats
- 59 Tolls
- 60 Taxes on professions, trades, callings and employments
- 61 Captivation taxes
- 62 Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling
- 63 Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty

- 64 Offences against laws with respect to any of the matters in this List
- 65 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List
- 66 Fees in respect of any of the matters in this List, but not including fees taken in any court

### List III—Concurrent List

- 1 Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power
- 2 Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution
- 3 Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community, persons subjected to such detention
- 4 Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List
- 5 Marriage and divorce, infants and minors, adoption, wills, intestacy and succession, joint family and partition, all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law
- 6 Transfer of property other than agricultural land, registration of deeds and documents
- 7 Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land
- 8 Actionable wrongs
- 9 Bankruptcy and insolvency
- 10 Trust and Trustees
- 11 Administrators-general and official trustees
- 11A Administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts
- 12 Evidence and oaths, recognition of laws, public acts and records, and judicial proceedings
- 13 Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration
- 14 Contempt of court, but not including contempt of the Supreme Court
- 15 Vagrancy, nomadic and migratory tribes

16 Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient

17 Prevention of cruelty to animals

17A Forests

17B Protection of wild animals and birds

18 Adulteration of foodstuffs and other goods

19 Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium

20 Economic and social planning

20A Population control and family planning

21 Commercial and industrial monopolies, combines and trusts

22 Trade unions, industrial and labour disputes

23 Social security and social insurance, employment and unemployment

24 Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits

25 Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I, vocational and technical training of labour

26 Legal, medical and other professions

27 Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan

28 Charities and charitable institutions, charitable and religious endowments and religious institutions

29 Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants

30 Vital statistics including registration of births and deaths

31 Ports other than those declared by or under law made by Parliament or existing law to be major ports

32 Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways

33 Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products,

(b) foodstuffs, including edible oilseeds and oils,

(c) cattle fodder, including oilcakes and other concentrates,

- (d) raw cotton, whether ginned or unginned, and cotton seed, and
- (e) raw jute

33A Weights and measures except establishment of standards

34 Price control

35 Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied

36 Factories

37 Boilers

38 Electricity

39 Newspapers, books and printing presses

40 Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance

41 Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property

42 Acquisition and requisitioning of property

43 Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State

44 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty

45 Inquiries and statistics for the purposes of any of the matters specified in List II or List III

46 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List

47 Fees in respect of any of the matters in this List, but not including fees taken in any court

***EIGHTH SCHEDULE***  
**(Articles 344(1) and 351)**  
**Languages**

- 1 Assamese
- 2 Bengali
- 3 Gujarati
- 4 Hindi
- 5 Kannada
- 6 Kashmiri
- 7 Konkani
- 8 Malayalam
- 9 Manipuri
- 10 Marathi
- 11 Nepali
- 12 Oriya
- 13 Punjabi
- 14 Sanskrit
- 15 Sindhi
16. Tamil
- 17 Telugu
- 18 Urdu

**NINTH SCHEDULE**  
(Article 31B)

- 1 The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950)
- 2 The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948)
- 3 The Bombay Maleku Tenure Abolition Act, 1949 (Bombay Act LXI of 1949)
- 4 The Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949)
- 5 The Panch Mahals, Mehwassi Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949)
- 6 The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950)
- 7 The Bombay Paragana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950)
- 8 The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act 1 of 1951)
- 9 The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948)
- 10 The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act 1 of 1950)
- 11 The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act 1 of 1951)
- 12 The Hyderabad (Abolition of Jagirs) Regulation, 1358FC (No LXIX of 1358, Fash)
- 13 The Hyderabad Jagirs (Commutation) Regulation, 1359FC (No XXV of 1359, Fash)
- 14 The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950)
- 15 The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U P Act XXVI of 1948)
- 16 The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948)
- 17 Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950)
- 18 The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951)
- 19 Chapter IIIA of the Industries (Development and Regulation) Act, 1951 (Act LKV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953)
- 20 The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951

21 The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961)

22 The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961)

23 The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961)

24 The Assam State Acquisition of Lands belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961)

25 The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954)

26 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), (except section 28 of this Act)

27 The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act 1 of 1955)

28 The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958)

29 The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XCVIII of 1958)

30 The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960)

31 The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVI of 1961)

32 The Sagbara and Meshwassi Estates (Proprietary Rights Abolition, etc) Regulation, 1962 (Gujarat Regulation 1 of 1962)

33 The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof

34 The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961)

35 The Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961)

36 The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950)

37 The Jenmukaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961)

38 The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961)

39 The Kerala Land Reforms Act, 1963 (Kerala Act 1 of 1964)

40 The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959)

41 The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960)

42 The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955)

43 The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956)

44 The Madras Occupants of Kudiyuruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961)

45 The Madras Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961)

46 The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961)

47 The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952)

48 The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957)

49 The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961)

50 The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961)

51 The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962)

52 The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960)

53 The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963)

54 The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953)

55 The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955)

56 The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959)

57 The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960)

58 The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961)

59 The West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954)

60 The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956)

61 The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954)

62 The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960)

63 The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1960)

64 The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960)

65 The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969)

- 66 The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971)
  - 67 The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act I of 1973)
  - 68 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973)
  - 69 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 (Bihar Act IX of 1973)
  - 70 The Bihar Land Reforms (Amendment) Act, 1972 (Bihar Act V of 1972)
  - 71 The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (Gujarat Act 2 of 1974)
  - 72 The Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act 26 of 1972)
  - 73 The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Himachal Pradesh Act 19 of 1973)
  - 74 The Kerala Land Reforms (Amendment) Act, 1972 (Kerala Act 17 of 1972)
  - 75 The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1972 (Madhya Pradesh Act 12 of 1974)
  - 76 The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1972 (Madhya Pradesh Act 13 of 1974)
  - 77 The Mysore Land Reforms (Amendment) Act, 1973 (Karnataka Act I of 1974)
  - 78 The Punjab Land Reforms Act, 1972 (Punjab Act 10 of 1973)
  - 79 The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act II of 1973)
  - 80 The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969)
  - 81 The West Bengal Land Reforms (Amendment) Act, 1972 (West Bengal Act XXII of 1972)
  - 82 The West Bengal Estates Acquisition (Amendment) Act, 1964 (West Bengal Act XXII of 1964)
  - 83 The West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Bengal Act XXXIII of 1973)
  - 84 The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1972 (Gujarat Act 5 of 1973)
  - 85 The Orissa Land Reforms (Amendment) Act, 1974 (Orissa Act 9 of 1974)
  - 86 The Tripura Land Revenue and Land Reforms (Second Amendment) Act, 1974 (Tripura Act 7 of 1974)
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88 The Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951).

89 The Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952)

90 The Mines and Minerals (Regulations and Development) Act, 1957 (Central Act 67 of 1957)

91 The Monopolies and Restrictive Trade Practices Act, 1969 (Central Act 54 of 1969)

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93 The Coking Coal Mines (Emergency Provisions) Act, 1971 (Central Act 64 of 1971)

94 The Coking Coal Mines (Nationalisation) Act, 1972 (Central Act 36 of 1972)

95 The General Insurance Business (Nationalisation) Act, 1972 (Central Act 57 of 1972)

96 The Indian Copper Corporation (Acquisition of Undertaking) Act, 1972 (Central Act 58 of 1972)

97 The Sick Textile Undertakings (Taking Over of Management) Act, 1972 (Central Act 72 of 1972)

98 The Coal Mines (Taking Over of Management) Act, 1973 (Central Act 15 of 1973)

99 The Coal Mines (Nationalisation) Act, 1973 (Central Act 26 of 1973)

100 The Foreign Exchange Regulation Act, 1973 (Central Act 46 of 1973)

101 The Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973 (Central Act 56 of 1973)

102 The Coal Mines (Conservation and Development) Act, 1974 (Central Act 28 of 1974)

103 The Additional Emoluments (Compulsory Deposit) Act, 1974 (Central Act 37 of 1974)

104 The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974)

105 The Sick Textile Undertakings (Nationalisation) Act, 1974 (Central Act 57 of 1974)

106 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1964 (Maharashtra Act XVI of 1965)

107 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1965 (Maharashtra Act XXXII of 1965)

108 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1968 (Maharashtra Act XVI of 1968)

109 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1968 (Maharashtra Act XXXIII of 1968)

110 The Maharashtra Agricultural Lands (Ceiling on Holdings) Amendment) Act, 1969 (Maharashtra Act XXXVII of 1969)

111 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Second Amendment) Act, 1969 (Maharashtra Act XXXVIII of 1969)

112 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1970 (Maharashtra Act XXVII of 1970)

113 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1972 (Maharashtra Act XIII of 1972)

114 The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1973 (Maharashtra Act L of 1973)

115 The Orissa Land Reforms (Amendment) Act, 1965 (Orissa Act 13 of 1965)

116 The Orissa Land Reforms (Amendment) Act, 1966 (Orissa Act 8 of 1967)

117 The Orissa Land Reforms (Amendment) Act, 1967 (Orissa Act 13 of 1967)

118 The Orissa Land Reforms (Amendment) Act, 1969 (Orissa Act 13 of 1969)

119 The Orissa Land Reforms (Amendment) Act, 1970 (Orissa Act 18 of 1970)

120 The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (Uttar Pradesh Act 18 of 1973)

121 The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (Uttar Pradesh Act 2 of 1975)

122 The Tripura Land Revenue and Land Reforms (Third Amendment) Act, 1975 (Tripura Act 3 of 1975)

123 The Dadra and Nagar Haveli Land Reforms Regulation, 1971 (3 of 1971)

124 The Dadra and Nagar Haveli Land Reforms (Amendment) Regulation, 1973 (5 of 1973)

125 Section 66A and Chapter IVA of the Motor Vehicles Act, 1939 (Central Act 4 of 1939)

126 The Essential Commodities Act, 1955 (Central Act 10 of 1955)

127 The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Central Act 13 of 1976)

128 The Bonded Labour System (Abolition) Act, 1976 (Central Act 19 of 1976)

129 The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976 (Central Act 20 of 1976)

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131 The Levy Sugar Price Equalisation Fund Act, 1976 (Central Act 31 of 1976)

- 132 The Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976)
- 133 The Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 (Central Act 59 of 1976)
- 134 The Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act 1 of 1957)
- 135 The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (Bombay Act XCIX of 1958)
- 136 The Gujarat Private Forests (Acquisition) Act, 1972 (Gujarat Act 14 of 1973)
- 137 The Haryana Ceiling on Land Holdings (Amendment) Act, 1976 (Haryana Act 17 of 1976)
- 138 The Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Himachal Pradesh Act 8 of 1974)
- 139 The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Himachal Pradesh Act 18 of 1974)
- 140 The Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act, 1974 (Karnataka Act 31 of 1974)
- 141 The Karnataka Land Reforms (Second Amendment) Act, 1976 (Karnataka Act 27 of 1976)
- 142 The Kerala Prevention of Eviction Act, 1966 (Kerala Act 12 of 1966)
- 143 The Thruppavaram Payment (Abolition) Act, 1969 (Kerala Act 19 of 1969)
- 144 The Sreepadam Lands Enfranchisement Act, 1969 (Kerala Act 20 of 1969)
- 145 The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 (Kerala Act 20 of 1971)
- 146 The Kerala Private Forests (Vesting and Assignment) Act, 1971 (Kerala Act 26 of 1971)
- 147 The Kerala Agricultural Workers Act, 1974 (Kerala Act 18 of 1974)
- 148 The Kerala Cashew Factories (Acquisition) Act, 1974 (Kerala Act 29 of 1974)
- 149 The Kerala Chitties Act, 1975 (Kerala Act 23 of 1975)
- 150 The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975)
- 151 The Kerala Land Reforms (Amendment) Act, 1976 (Kerala Act 15 of 1976)
- 152 The Kanam Tenancy Abolition Act, 1976 (Kerala Act 16 of 1976)
- 153 The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 (Madhya Pradesh Act 20 of 1974)
- 154 The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1975 (Madhya Pradesh Act 2 of 1976)

155. The West Khandesh Meshwari Estates (Proprietary Rights Abolition, etc.) Regulation, 1961 (Maharashtra Regulation 1 of 1962)

156. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Maharashtra Act XIV of 1975)

157. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 (Maharashtra Act XXI of 1975)

158. The Maharashtra Private Forests (Acquisition) Act, 1975 (Maharashtra Act XXIX of 1975)

159. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1975 (Maharashtra Act XLVII of 1975)

160. The Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975 (Maharashtra Act II of 1976)

161. The Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952)

162. The Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954)

163. The Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (Rajasthan Act 11 of 1964)

164. The Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1976 (Rajasthan Act 8 of 1976)

165. The Rajasthan Tenancy (Amendment) Act, 1976 (Rajasthan Act 12 of 1976)

166. The Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act 17 of 1970)

167. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1971 (Tamil Nadu Act 41 of 1971)

168. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1972 (Tamil Nadu Act 10 of 1972)

169. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1972 (Tamil Nadu Act 20 of 1972)

170. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1972 (Tamil Nadu Act 37 of 1972)

171. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fourth Amendment Act, 1972 (Tamil Nadu Act 39 of 1972)

172. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972, (Tamil Nadu Act 7 of 1974)

173. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fifth Amendment Act, 1972 (Tamil Nadu Act 10 of 1974)

174. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1974 (Tamil Nadu Act 15 of 1974)

175. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Third Amendment Act, 1974 (Tamil Nadu Act 30 of 1974)

176. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1974 (Tamil Nadu Act 32 of 1974)

177 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1975 (Tamil Nadu Act 11 of 1975)

178 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1975 (Tamil Nadu Act 21 of 1975)

179 Amendments made to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951) by the Uttar Pradesh Land Laws (Amendment) Act, 1971 (Uttar Pradesh Act 21 of 1971) and the Uttar Pradesh Land Laws (Amendment) Act, 1974 (Uttar Pradesh Act 34 of 1974)

180 The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 (Uttar Pradesh Act 20 of 1976)

181 The West Bengal Land Reforms (Second Amendment) Act, 1972 (West Bengal Act XXVIII of 1972)

182 The West Bengal Restoration of Alienated Land Act, 1973 (West Bengal Act XXIII of 1973)

183 The West Bengal Land Reforms (Amendment) Act, 1974 (West Bengal Act XXXIII of 1974)

184 The West Bengal Land Reforms (Amendment) Act, 1975 (West Bengal Act XXIII of 1975)

185 The West Bengal Land Reforms (Amendment) Act, 1976 (West Bengal Act XII of 1976)

186 The Delhi Land Holdings (Ceiling) Amendment Act, 1976 (Central Act 15 of 1976)

187 The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Goa, Daman and Diu Act I of 1976)

188 The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (Pondicherry Act 9 of 1974)

189 The Assam (Temporarily Settled Areas) Tenancy Act, 1971 (Assam Act XXIII of 1971)

190 The Assam (Temporarily Settled Areas) Tenancy (Amendment) Act, 1974 (Assam Act XVIII of 1974)

191 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1974 (Bihar Act 31 of 1975).

192 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976)

193 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1978 (Bihar Act VII of 1978)

194 The Land Acquisition (Bihar Amendment) Act, 1979 (Bihar Act 2 of 1980)

195 The Haryana Ceiling on Land Holdings (Amendment) Act, 1977 (Haryana Act 14 of 1977)

196 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1978 (Tamil Nadu Act 25 of 1978)

197 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land Amendment) Act, 1979 (Tamil Nadu Act 11 of 1979)

198 The Uttar Pradesh Zamindari Abolition Laws (Amendment) Act 1978 (Uttar Pradesh Act 15 of 1978)

199 The West Bengal Restoration of Alienated Land (Amendment) Act 1978 (West Bengal Act XXIV of 1978)

200 The West Bengal Restoration of Alienated Land (Amendment) Act 1980 (West Bengal Act LVI of 1980)

201 The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Goa Daman and Diu Act 7 of 1964)

202 The Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 (Goa, Daman and Diu Act 17 of 1976)

203 The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation I of 1959)

204 The Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (Andhra Pradesh Regulation 2 of 1963)

205 The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Andhra Pradesh Regulation 1 of 1970)

206 The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1971 (Andhra Pradesh Regulation 1 of 1971)

207 The Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978 (Andhra Pradesh Regulation 1 of 1978)

208 The Bihar Tenancy Act, 1885 (Bihar Act 8 of 1885)

209 The Chhota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) (Chapter VIII sections 46, 47, 48, 48A and 49, Chapter X sections 71, 71A and 71B, and Chapter XVIII sections 240, 241 and 242)

210 The Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949) except section 53

211 The Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969)

212 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55 of 1982)

213 The Gujarat Devasthan Inams Abolition Act, 1969 (Gujarat Act 16 of 1969)

214 The Gujarat Tenancy Laws (Amendment) Act, 1976 (Gujarat Act 37 of 1976)

215 The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1976 (President's Act 43 of 1976)

216 The Gujarat Devasthan Inams Abolition (Amendment) Act, 1977 (Gujarat Act 27 of 1977)

217 The Gujarat Tenancy Laws (Amendment) Act, 1977 (Gujarat Act 30 of 1977)

218 The Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Gujarat Act 37 of 1980)

219 The Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act, 1982 (Gujarat Act 8 of 1982)

220 The Himachal Pradesh Transfer of Land (Regulation) Act, 1968 (Himachal Pradesh Act 15 of 1969)

221 The Himachal Pradesh Transfer of Land (Regulation) (Amendment) Act, 1986 (Himachal Pradesh Act 16 of 1986)

222 The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of certain Lands) Act, 1978 (Karnataka Act 2 of 1979)

223 The Kerala Land Reforms (Amendment) Act, 1978 (Kerala Act 13 of 1978)

224 The Kerala Land Reforms (Amendment) Act, 1981 (Kerala Act 19 of 1981)

225 The Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 (Madhya Pradesh Act 61 of 1976)

226 The Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (Madhya Pradesh Act 15 of 1980)

227 The Madhya Pradesh Akrishik Jot Uchachatam Seema Adhinnyam, 1981 (Madhya Pradesh Act 11 of 1981)

228 The Madhya Pradesh Ceiling on Agricultural Holdings (Second Amendment) Act, 1976 (Madhya Pradesh Act 1 of 1984)

229 The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1984 (Madhya Pradesh Act 14 of 1984)

230 The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1989 (Madhya Pradesh Act 8 of 1989)

231 The Maharashtra Land Revenue Code, 1966 (Maharashtra Act 41 of 1966), sections 36, 36A and 36B

232 The Maharashtra Land Revenue Code and the Maharashtra Restoration of Lands to Scheduled Tribes (Second Amendment) Act, 1976 (Maharashtra Act 30 of 1977)

233 The Maharashtra Abolition of Subsisting Proprietary Rights to Mines and Minerals in certain Lands Act, 1985 (Maharashtra Act 16 of 1985)

234 The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (Orissa Regulation 2 of 1956)

235 The Orissa Land Reforms (Second Amendment) Act, 1975 (Orissa Act 29 of 1976)

236 The Orissa Land Reforms (Amendment) Act, 1976 (Orissa Act 30 of 1976).

237 The Orissa Land Reforms (Second Amendment) Act, 1976 (Orissa Act 44 of 1976)

238 The Rajasthan Colonisation (Amendment) Act, 1984 (Rajasthan Act 12 of 1984)

239 The Rajasthan Tenancy (Amendment) Act, 1984 (Rajasthan Act 13 of 1984)

240 The Rajasthan Tenancy (Amendment) Act, 1987 (Rajasthan Act 21 of 1987)

241 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1979 (Tamil Nadu Act 8 of 1980)

242 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1980 (Tamil Nadu Act 21 of 1980)

243 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1981 (Tamil Nadu Act 59 of 1981)

244 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1983 (Tamil Nadu Act 2 of 1984)

245 The Uttar Pradesh Land Laws (Amendment) Act, 1982 (Uttar Pradesh Act 20 of 1982)

246 The West Bengal Land Reforms (Amendment) Act, 1965 (West Bengal Act 18 of 1965)

247 The West Bengal Land Reforms (Amendment) Act, 1966 (West Bengal Act 11 of 1966)

248 The West Bengal Land Reforms (Second Amendment) Act, 1969 (West Bengal Act 23 of 1969)

249 The West Bengal Estate Acquisition (Amendment) Act, 1977 (West Bengal Act 36 of 1977)

250 The West Bengal Land Holding Revenue Act, 1979 (West Bengal Act 44 of 1979)

251 The West Bengal Land Reforms (Amendment) Act, 1980 (West Bengal Act 41 of 1980)

252 The West Bengal Land Holding Revenue (Amendment) Act, 1981 (West Bengal Act 33 of 1981)

253 The Calcutta Thikka Tenancy (Acquisition and Regulation) Act, 1981 (West Bengal Act 37 of 1981)

254 The West Bengal Land Holding Revenue (Amendment) Act, 1982 (West Bengal Act 23 of 1982)

255 The Calcutta Thikka Tenancy (Acquisition and Regulation) (Amendment) Act, 1984 (West Bengal Act 41 of 1984)

256 The Mahe Land Reforms Act, 1968 (Pondicherry Act 1 of 1968)

257 The Mahe Land Reforms (Amendment) Act, 1980 (Pondicherry Act 1 of 1981)

257A The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act 1993 (Tamil Nadu Act 45 of 1994)

258 The Bihar Privileged persons Homestead Tenancy Act, 1947 (Bihar Act 4 of 1948)

259 The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956)

260 The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 7 of 1970)

261 The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1970 (Bihar Act 9 of 1970)

262 The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act 27 of 1975)

263 The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982)

264 The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Bihar Act 21 of 1987)

265 The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1989 (Bihar Act 11 of 1989)

266 The Bihar Land Reforms (Amendment) Act, 1989 (Bihar Act 11 of 1990)

267 The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984)

268 The Kerala land Reforms (Amendment) Act, 1989 (Kerala Act 16 of 1989)

269 The Kerala land Reforms (Second Amendment) Act, 1989 (Kerala Act 2 of 1990)

270 The Orissa Land Reforms (Amendment) Act, 1989 (Orissa Act 9 of 1990)

271 The Rajasthan Tenancy (Amendment) Act, 1979 (Rajasthan Act 16 of 1979)

272 The Rajasthan Colonisation (Amendment) Act, 1987 (Rajasthan Act 2 of 1987)

273 The Rajasthan Colonisation (Amendment) Act, 1989 (Rajasthan Act 12 of 1989)

274 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984)

275 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1986 (Tamil Nadu Act 57 of 1986)

276 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1987 (Tamil Nadu Act 4 of 1988)

277 The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1989 (Tamil Nadu Act 30 of 1989)

278 The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981)

279 The West Bengal Land Reforms (Amendment) Act, 1986 (West Bengal Act 5 of 1986)

280 The West Bengal Land Reforms (Second Amendment) Act, 1986 (West Bengal Act 19 of 1986)

281 The West Bengal Land Reforms (Third Amendment) Act, 1986 (West Bengal Act 35 of 1986)

282 The West Bengal Land Reforms (Amendment) Act, 1989 (West Bengal Act 23 of 1989)

283 The West Bengal Land Reforms (Amendment) Act, 1990 (West Bengal Act 24 of 1990)

284 The West Bengal Land Reforms Tribunal Act, 1991 (West Bengal Act 12 of 1991)

*Explanation* —Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), in contravention of the second proviso to clause (1) of article 31A shall, to the extent of the contravention, be void

**TENTH SCHEDULE**  
**[Articles 102(2) and 191(2)]**

**Provisions as to disqualification on ground of defection**

**1. Interpretation**

In this Schedule, unless the context otherwise requires,—

(a) 'House' means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State,

(b) 'legislature party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) 'original political party', in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2,

(d) 'paragraph' means a paragraph of this Schedule

**2. Disqualification on ground of defection**

(1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily gives up his membership of such political party, or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention

*Explanation* —For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member,

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party,

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party,

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph

### 3. Disqualification on ground of defection not to apply in case of split

Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one third of the members of such legislature party,—

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground

(i) that he has voluntarily given up his membership of his original political party, or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention, and

(b) from the time of such split; such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph

### 4. Disqualification on ground of defection not to apply in case of merger

(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger, or

(b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger

### 5. Exemption

Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party, or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office

### 6. Decision on questions as to disqualification on ground of defection

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212

## 7. Bar of jurisdiction of courts

Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule

## 8. Rules

(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties if any, to which different members of the House belong,

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished,

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished, and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House

**ELEVENTH SCHEDULE****(Article 243G)**

- 1 Agriculture, including agricultural extension
- 2 Land improvement, implementation of land reforms, land consolidation and soil conservation
- 3 Minor irrigation, water management and watershed development
- 4 Animal husbandry, dairying and poultry
- 5 Fisheries
- 6 Social forestry and farm forestry
- 7 Minor forest produce
- 8 Small scale industries, including food processing industries
- 9 Khadi, village and cottage industries
- 10 Rural housing
- 11 Drinking water
- 12 Fuel and fodder
- 13 Roads, culverts, bridges, ferries, waterways and other means of communication
- 14 Rural electrification, including distribution of electricity
- 15 Non-conventional energy sources
- 16 Poverty alleviation programme
- 17 Education, including primary and secondary schools
- 18 Technical training and vocational education
- 19 Adult and non-formal education
- 20 Libraries
- 21 Cultural activities
- 22 Markets and fairs
- 23 Health and sanitation, including hospitals, primary health centres and dispensaries
- 24 Family welfare
- 25 Women and child development
- 26 Social welfare, including welfare of the handicapped and mentally retarded
- 27 Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes
- 28 Public distribution system
- 29 Maintenance of community assets.

**TWELFTH SCHEDULE****(Article 243W)**

- 1 Urban planning including town planning
- 2 Regulation of land-use and construction of buildings
- 3 Planning for economic and social development
- 4 Roads and bridges
- 5 Water supply for domestic, industrial and, commercial purposes
- 6 Public health, sanitation conservancy and solid waste management
- 7 Fire services
- 8 Urban forestry protection of the environment and promotion of ecological aspects
- 9 Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded
- 10 Slum improvement and upgradation
- 11 Urban poverty alleviation
- 12 Provision of urban amenities and facilities such as parks, gardens, play-grounds
- 13 Promotion of cultural, educational and aesthetic aspects
- 14 Burials and burial grounds, cremations, cremation grounds and electric crematoriums
- 15 Cattle ponds, prevention of cruelty to animals
- 16 Vital statistics including registration of births and deaths
- 17 Public amenities including street lighting, parking lots, bus stops and public conveniences
- 18 Regulation of slaughter houses and tanneries

# 16

## CONSTITUTION OF REPUBLIC OF INDONESIA

### THE 1945 CONSTITUTION

#### THE PREAMBLE TO THE CONSTITUTION

Whereas freedom is the inalienable right of all nations, colonialism must be abolished in this world as it is not in conformity with humanity and justice,

And the moment of rejoicing has arrived in the struggle of the Indonesian freedom movement to guide the people safely and well to the threshold of the independence of the state of Indonesia which shall be free, united, sovereign, just and prosperous,

By the grace of God Almighty and impelled by the noble desire to live a free national life, the people of Indonesia hereby declare their independence

Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of

Department of Information -- Republic of Indonesia 1989

#### PREFACE

The translation of the current publication of "The 1945 Constitution" is a provisional revision to that of the previous editions which were based on the translation of its first edition published by the then Yogyakarta-based Information Ministry of the Republic of Indonesia in 1950

This revision is still provisional owing to the flexible Constitution which includes a wider scope of philosophy, so that a more reliable translation is still expected. We are aware that this translation is still far from perfect and yet this translation aims at helping those who want to study Indonesian laws by using English as its introductory language

We do very much appreciate constructive opinion and input from critics and any other interested party for our planned revised edition

the people and to contribute to the establishment of a world order based freedom, abiding peace and social justice, the national independence Indonesia shall be formulated into a constitution of the sovereign Republic Indonesia which is based on the belief in the One and Only God, just : humanity, the unity of Indonesia, democracy guided by the inner wisdom deliberations amongst representatives and the realization of social justice all of the people of Indonesia

## *CHAPTER I*

### **FORM OF THE STATE AND SOVEREIGNTY**

1.1 The State of Indonesia shall be a unitary State which has the form a republic

2 Sovereignty shall be vested in the people and shall be exercised in by them

## *CHAPTER II*

### **THE MAJELIS PERMUSYAWARATAN RAKYAT**

2.1 The Majelis Permusyawaratan Rakyat shall consist of the members the Dewan Perwakilan Rakyat augmented by the delegates from the regional territories and groups as provided for by statutory regulations

2 The Majelis Permusyawaratan Rakyat shall meet at least once in every five years in the capital of the State

3 All decisions of the Majelis Permusyawaratan Rakyat shall be taken by majority vote

3. The Majelis Permusyawaratan Rakyat shall determine the Constitution and the guidelines of the policy of State

## *CHAPTER III*

### **THE EXECUTIVE POWER**

4.1 The President of the Republic of Indonesia shall hold the power of Government in accordance with the Constitution

2 In exercising his duties, the President shall be assisted by a Vice President

5.1 The President shall hold the power to make statutes in agreement with the Dewan Perwakilan Rakyat

2 The President shall determine the Government regulations to expedite the enforcement of laws

6.1 The President shall be a native Indonesian citizen

2 The President and the Vice-President shall be elected by the Majelis Permusyawaratan Rakyat by a majority vote

7. The President and the Vice-President shall hold office for a term of five years and shall be eligible for re-election

8. Should the President die, resign or be unable to perform his duties

during his term of office, he shall be succeeded by the Vice-President until the expiry of his term of office

9. Before assuming office, the President and the Vice-President shall take the oath of office according to their religions, or solemnly promise before the Majelis Permusyawaratan Rakyat or the Dewan Perwakilan Rakyat as follows

**The President's/Vice-President's Oath**

"In the name of God Almighty, I swear that I will perform the duties of the President Vice-President of the Republic of Indonesia to the best of my ability and as justly as possible, and that I will strictly observe the Constitution and consistently implement the law and regulations in the service of the country and the people "

**The President's/Vice-President's Promise**

"I solemnly promise that I will perform the duties of the President Vice-President of the Republic of Indonesia to the best of my ability and as justly as possible, and that I will strictly observe the constitution and consistently implement the law and regulations in the service of the country and the people "

10. The President is the Supreme Commander of the Army, the Navy and the Air Force

11. In agreement with the Dewan Perwakilan Rakyat, the President declares war, makes peace and concludes treaties with other States.

12. The President declares the State of emergency The conditions for such a declaration and the measures to deal with the emergency shall be governed by law

13.1 The President appoints ambassadors and consuls

2 The President receives the credentials of foreign ambassadors

14. The President grants mercy, amnesty, pardon and restoration of rights

15 The President grants titles, decorations and other distinctions of honour

## CHAPTER IV

### THE SUPREME ADVISORY COUNCIL

16.1 The composition of the Supreme Advisory Council shall be determined by law

2 The Council has the duty to reply to questions raised by the President and has the right to submit recommendations to the government

## CHAPTER V

### THE MINISTERS OF STATE

17.1 The President shall be assisted by the Ministers of State

2 These Ministers shall be appointed and dismissed by the President

3 These Ministers shall head the Government departments

**CHAPTER VI****THE REGIONAL GOVERNMENTS**

18. The division of the territory of Indonesia into large and small regions shall be prescribed by law in consideration of and with due regard to the principles of deliberation in the Government system and the hereditary rights of special territories

**CHAPTER VII****THE DEWAN PERWAKILAN RAKYAT**

19.1 The composition of the Dewan Perwakilan Rakyat shall be prescribed by law

2 The Dewan Perwakilan Rakyat shall meet at least once a year

20.1 Every law shall require the approval of the Dewan Perwakilan Rakyat

2 Should a Bill not obtain the approval of the Dewan Perwakilan Rakyat, the Bill shall not be resubmitted during the same session of the Dewan Perwakilan Rakyat

21.1 Members of the Dewan Perwakilan Rakyat have the right to submit a bill

2 Should such a Bill not obtain the sanction of the President notwithstanding the approval of the Dewan Perwakilan Rakyat, the bill shall not be resubmitted during the same session of the Dewan

22.1 In the event of a compelling emergency, the President has the right to issue Government regulations in lieu of laws

2 Such regulations shall have the consent of the Dewan Perwakilan Rakyat during its subsequent session

3 Where the approval of the Dewan is not obtained, the Government regulations shall be revoked

**CHAPTER VIII****FINANCE**

23.1 The annual State Budget shall be sanctioned by law. In the event that the Dewan Perwakilan Rakyat does not approve a Draft Budget, the Government shall adopt the budget of the preceding year

2 All Government taxes shall be determined by law

3 The forms and denominations of the currency shall be determined by law

4 Other financial matters shall be regulated by law

5 In order to examine the accountability of the State finances, a State Audit Board shall be established by statutory regulation. The findings of the Board shall be reported to the Dewan Perwakilan Rakyat

## **CHAPTER IX**

### **THE JUDICIARY POWER**

24.1 The judiciary power shall be exercised by a Supreme Court and such other courts of law as are provided for by law

2 The composition and powers of these legal bodies shall be regulated by law

25. The appointment and dismissal of judges shall be regulated by law

## **CHAPTER X**

### **THE CITIZENS**

26.1 Citizens are native Indonesian persons or persons of other nations who have acquired a legal status as citizens

2 Conditions to acquire and other matters on citizenship shall be determined by law

27.1 All citizens have equal status before the law and in Government and shall abide by the law and the Government without any exception

2 Every citizen has the right to work and to live in human dignity

28. Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law

## **CHAPTER XI**

### **RELIGION**

29.1 The State shall be based upon the belief in the One and Only God

2 The State guarantees all persons the freedom of worship, each according to his/her own religion or belief

## **CHAPTER XII**

### **NATIONAL DEFENCE**

30.1 Every citizen has the right and duty to participate in the defence of the country

2 The rules governing defence shall be regulated by law

## **CHAPTER XIII**

### **EDUCATION**

31.1 Every citizen has the right to education

2 The government shall establish and conduct a national educational system which shall be regulated by law.

32. The Government shall advance the national culture

## **CHAPTER XIV**

### **SOCIAL WELFARE**

33. 1 The economy shall be organized as a common endeavour based upon the principles of the family system

2 Sectors of production which are important for the country and affect the life of the people shall be controlled by the State.

3 The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people

34. The poor and destitute children shall be cared for by the State

## **CHAPTER XV**

### **THE FLAG AND THE LANGUAGE**

35. The national flag of Indonesia shall be the red-and-white

36. The national language of Indonesia shall be the Bahasa Indonesia or the Indonesian language

## **CHAPTER XVI**

### **AMENDMENTS TO THE CONSTITUTION**

37.1 In order to amend the Constitution, not less than two-thirds of the total number of members of the Majelis Permusyawaratan Rakyat shall be in attendance

2 Decisions shall be taken with the approval of not less than two-thirds of the number of members in attendance

### **TRANSITIONAL PROVISIONS**

1 The Preparatory Committee for Indonesia's Independence shall arrange and conduct the transfer of administration to the Government of Indonesia

2 All existing State institutions continue to function and regulations remain valid as long as no new ones are established in conformity with this Constitution

3 For the first time, the President and the Vice-President shall be elected by the Preparatory Committee for Indonesia's Independence

4. Prior to the formation of the Majelis Permusyawaratan Rakyat, the Dewan Perwakilan Rakyat and the Supreme Advisory Council in accordance with this Constitution, all their powers shall be exercised by the President assisted by a National Committee

### **ADDITIONAL PROVISIONS**

1 Within six months after the end of the Great East Asia War, the President of Indonesia shall take preparatory steps and execute all the provisions of this Constitution

2 Within six months after its formation, the Majelis Permusyawaratan Rakyat shall convene a session to decree the Constitution

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# 17

## CONSTITUTION OF ISLAMIC REPUBLIC OF IRAN

Adopted on 24 Oct 1979

Effective since 3 Dec 1979

Amended on 28 July 1989

### PREAMBLE

The Constitution of the Islamic Republic of Iran advances the cultural, social, political, and economic institutions of Iranian society based on Islamic principles and norms, which represent an honest aspiration of the Islamic Ummah. This aspiration was exemplified by the nature of the great Islamic Revolution of Iran, and by the course of the Muslim people's struggle, from its beginning until victory, as reflected in the decisive and forceful calls raised by all segments of the populations. Now, at the threshold of this great victory, our nation, with all its beings, seeks its fulfillment.

The basic characteristic of this revolution, which distinguishes it from other movements that have taken place in Iran during the past hundred years, is its ideological and Islamic nature. After experiencing the anti-despotic constitutional movement and the anti-colonialist movement centered on the nationalization of the oil industry, the Muslim people of Iran learned from this costly experience that the obvious and fundamental reason for the failure of those movements was their lack of an ideological basis. Although the Islamic line of thought and the direction provided by militant religious leaders played an essential role in the recent movements, nonetheless, the struggles waged in the course of those movements quickly fell into stagnation due to departure from genuine Islamic positions. Thus it was that the awakened conscience of

the nation, under the leadership of Imam Khomeini, came to perceive the necessity of pursuing a genuinely Islamic and ideological line in its struggles. And this time, the militant 'ulama' of the country, who had always been in the forefront of popular movements, together with the committed writers and intellectuals, found new impetus by following his leadership.

### **The Dawn of the Movement**

The devastating protest of Imam Khomeini against the American conspiracy known as the "White Revolution," which was a step intended to stabilize the foundations of despotic rule and to reinforce the political, cultural, and economic dependence of Iran on world imperialism, brought into being a united movement of the people and, immediately afterwards, a momentous revolution of the Muslim nation in June 1963. Although this revolution was drowned in blood, in reality it heralded the beginning of the blossoming of a glorious and massive uprising, which confirmed the central role of Imam Khomeini as an Islamic leader. Despite his exile from Iran after his protest against the humiliating law of capitulation (which provided legal immunity for American advisers), the firm bond between the Imam and the people endured, and the Muslim nation, particularly committed intellectuals and militant 'ulama', continued their struggle in the face of banishment and imprisonment, torture and execution.

Throughout this time, the conscious and responsible segment of society was bringing enlightenment to the people from the strongholds of the mosques, centers of religious teaching, and universities. Drawing inspiration from the revolutionary and fertile teachings of Islam, they began the unrelenting yet fruitful struggle of raising the level of ideological awareness and revolutionary consciousness of the Muslim people. The despotic regime which had begun the suppression of the Islamic movement with barbaric attacks on the Faydiyyah Madrasah, Tehran University, and all other active centers of revolution, in an effort to evade the revolutionary anger of the people, resorted to the most savage and brutal measures. And in these circumstances, execution by firing squads, endurance of medieval tortures, and long terms of imprisonment were the price our Muslim nation had to pay to prove its firm resolve to continue the struggle. The Islamic Revolution of Iran was nurtured by the blood of hundreds of young men and women, infused with faith, who raised their cries of "Allahu Akbar" at daybreak in execution yards, or were gunned down by the enemy in streets and marketplaces. Meanwhile, the continuing declarations and messages of the Imam that were issued on various occasions, extended and deepened the consciousness and determination of the Muslim nation to the utmost.

### **Islamic Government**

The plan of the Islamic government as proposed by Imam Khomeini at the height of the period of repression and strangulation practiced by the despotic regime, produced a new specific, and streamline motive for the Muslim people, opening up before them the true path of Islamic ideological struggle, and giving greater intensity to the struggle of militant and committed Muslims both within the country and abroad.

The movement continued on this course until finally popular dissatisfaction and intense rage of the public caused by the constantly increasing repression at home, and the projection of the struggle at the international level after exposure of the regime by the 'ulama' and militant students, shook the foundations of the regime violently. The regime and its sponsors were compelled to decrease the intensity of repression and to "liberalize" the political atmosphere of the country.

This, they imagined, would serve as a safety valve, which would prevent their eventual downfall. But the people, aroused, conscious, and resolute under the decisive and unfaltering leadership of the Imam, embarked on a triumphant, unified, comprehensive, and countrywide uprising.

### **The Wrath of the People**

The publication of an outrageous article meant to malign the revered 'ulama' and in particular Imam Khomeini on 7 Jan 1978 by the ruling regime accelerated the revolutionary movement and caused an outburst of popular outrage across the country. The regime attempted to quiet the heat of the people's anger by drowning the protest and uprising in blood, but the bloodshed only quickened the pulse rate of the Revolution. The seventh-day and fortieth-day commemorations of the martyrs of the Revolution, like a series of steady heartbeats, gave greater vitality, intensity, vigor, and solidarity to this movement all over the country. In the course of this popular movement, the employees of all government establishments took an active part in the effort to overthrow the tyrannical regime by calling a general strike and participating in street demonstrations. The widespread solidarity of men and women of all segments of society and of all political and religious factions, played a clearly determining role in the struggle. Especially the women were actively and massively present in a most conspicuous manner at all stages of this great struggle. The common sight of mothers with infants in their arms rushing towards the scene of battle and in front of the barrels of machine-guns indicated the essential and decisive role played by this major segment of society in the struggle.

### **The Price the Nation Paid**

After slightly more than a year of continuous and unrelenting struggle, the sapling of the evolution, watered by the blood of more than 60,000 martyrs and 100,000 wounded and disabled, not to mention property damage, came to bear fruit amidst the cries of "Independence! Freedom! Islamic government!" This great movement, which attained victory through reliance upon faith, unity, and the decisiveness of its leadership at every critical and sensitive juncture, as well as the self-sacrificing spirit of the people, succeeded in upsetting all the calculations of imperialism and destroying all its connections and institutions, thereby opening a new chapter in the history of all-embracing popular revolutions of the world.

On 12 and 13 Feb 1979, the world witnessed the collapse of the monarchical regime. Domestic tyranny and foreign domination, both of which were based upon it, were shattered. This great success proved to be the

vanguard of Islamic government a long-cherished desire of the Muslim people and brought with it the glad tidings of final victory

Unanimously, the Iranian people declared their final and firm decision, in the referendum on the Islamic Republic, to bring about a new political system, that of the Islamic Republic

A majority of 98.2% of the people voted for this system. The Constitution of the Islamic Republic of Iran, setting forth as it does the political, social, cultural, and economic institutions and their relations that are to exist in society, must now provide for the consolidation of the foundations of Islamic Government, and propose the plan of a new system of Government to be erected on the ruins of the previous order

#### **The Form of Government in Islam**

In the view of Islam, Government does not derive from the interests of a class, nor does it serve the domination of an individual or a group. Rather, it represents the fulfillment of the political ideal of a people who bear a common faith and common outlook, taking an organized form in order to initiate the process of intellectual and ideological evolution towards the final goal, i.e., movement towards Allah. Our nation, in the course of its revolutionary developments, has cleansed itself of the dust and impurities that accumulated during the past and purged itself of foreign ideological influences, returning to authentic intellectual standpoints and world-view of Islam. It now intends to establish an ideal and model society on the basis of Islamic norms. The mission of the Constitution is to realize the ideological objectives of the movement and to create conditions conducive to the development of man in accordance with the noble and universal values of Islam.

With due attention to the Islamic content of the Iranian Revolution, the Constitution provides the necessary basis for ensuring the continuation of the Revolution at home and abroad. In particular, in the development of international relations, the Constitution will strive with other Islamic and popular movements to prepare the way for the formation of a single world community (in accordance with the Koranic verse "This your community is a single community, and I am your Lord, so worship Me" [21:92]), and to assure the continuation of the struggle for the liberation of all deprived and oppressed peoples in the world.

With due attention to the essential character of this great movement, the Constitution guarantees the rejection of all forms of intellectual and social tyranny and economic monopoly, and aims at entrusting the destinies of the people to the people themselves in order to break completely with the system of oppression. (This is in accordance with the Koranic verse "He removes from them their burdens and the fetters that were upon them" [7:157])

In creating, on the basis of ideological outlook, the political infrastructures and institutions that are the foundation of society, the righteous will assume the responsibility of governing and administering the

country (in accordance with the Koranic verse "Verily My righteous servants shall inherit the earth" [21 105]) Legislation setting forth regulations for the administration of society will revolve around the Koran and the Sunnah. Accordingly, the exercise of meticulous and earnest supervision by just, pious, and committed scholars of Islam is an absolute necessity. In addition, the aim of Government is to foster the growth of man in such a way that he progresses towards the establishment of a Divine order (in accordance with the Koranic phrase "And toward God is the journeying" [3 28]), and to create favourable conditions for the emergence and blossoming of man's innate capacities, so that the theomorphic dimensions of the human being are manifested (in accordance with the injunction of the Prophet (S) "Mould yourselves according to the Divine morality"), this goal cannot be attained without the active and broad participation of all segments of society in the process of social development.

With due attention to this goal, the Constitution provides the basis of such participation by all members of society at all stages of the political decision-making process on which the destiny of the country depends. In this way during the course of human development towards perfection, each individual will himself be involved in, and responsible for the growth, advancement, and leadership of society. Precisely in this lies the realization of the holy government upon earth (in accordance with the Koranic verse "And we wish to show favour to those who have been oppressed upon earth, and to make them leaders and the inheritors" [28 5]).

#### **The Wilayah of the Just Faqlh**

In keeping with the principles of governance and the perpetual necessity of leadership, the Constitution provides for the establishment of leadership by a holy person possessing the necessary qualifications and recognized as leader by the people (this is in accordance with the saying "The direction of affairs is in the hands of those who are learned concerning God and are trustworthy in matters pertaining to what He permits and forbids"). Such leadership will prevent any deviation by the various organs of State from their essential Islamic duties.

#### **The Economy is a Means, Not an End**

In strengthening the foundations of the economy, the fundamental consideration will be fulfillment of the material needs of man in the course of his overall growth and development. This principle contrasts with other economic systems, where the aim is concentration and accumulation of wealth and maximization of profit. In materialist schools of thought, the economy represents an end in itself, so that it comes to be a subversive and corrupting factor in the course of man's development. In Islam, the economy is a means, and all that is required of a means is that it should be an efficient factor contributing to the attainment of the ultimate goal.

From this viewpoint, the economic program of Islam consists of providing the means needed for the emergence of the various creative capacities of the human being. Accordingly, it is the duty of the Islamic

Government to furnish all citizens with equal and appropriate opportunities, to provide them with work, and to satisfy their essential needs, so that the course of their progress may be assured

### **Woman in the Constitution**

Through the creation of Islamic social infrastructures, all the elements of humanity that served the multifaceted foreign exploitation shall regain their true identity and human rights. As a part of this process, it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the old regime.

The family is the fundamental unit of society and the main center for the growth and edification of human being. Compatibility with respect to belief and ideal, which provides the primary basis for man's development and growth, is the main consideration in the establishment of a family. It is the duty of the Islamic Government to provide the necessary facilities for the attainment of this goal. This view of the family unit delivers woman from being regarded as an object or instrument in the service of promoting consumerism and exploitation. Not only does woman recover thereby her momentous and precious function of motherhood, rearing of ideologically committed human beings, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life. Given the weighty responsibilities that woman thus assumes, she is accorded in Islam great value and nobility.

### **An Ideological Army**

In the formation and equipping of the country's defence forces, due attention must be paid to faith and ideology as the basic criteria. Accordingly, the Army of the Islamic Republic of Iran and the Islamic Revolutionary Guards Corps are to be organized in conformity with this goal, and they will be responsible not only for guarding and preserving the frontiers of the country, but also for fulfilling the ideological mission of jihad in God's way, that is, extending the sovereignty of God's law throughout the world (this is in accordance with the Koranic verse "Prepare against them whatever force you are able to muster, and strings of horses, striking fear into the enemy of God and your enemy, and others besides them" [8:60]).

### **The Judiciary in the Constitution**

The judiciary is of vital importance in the context of safeguarding the rights of the people in accordance with the line followed by the Islamic movement, and the prevention of deviations within the Islamic nation. Provision has therefore been made for the creation of a judicial system based on Islamic justice and operated by just judges with meticulous knowledge of the Islamic laws. This system, because of its essentially sensitive nature and the need for full ideological conformity, must be free from every kind of unhealthy relation and connection (this is in accordance with the Koranic verse "When you judge among the people, judge with justice" [4:58]).

### **Executive Power**

Considering the particular importance of the executive power in implementing the laws and ordinances of Islam for the sake of establishing the rule of just relations over society, and considering, too, its vital role in paving the way for the attainment of the ultimate goal of life, the executive power must work toward the creation of an Islamic society. Consequently, the confinement of the executive power within any kind of complex and inhibiting system that delays or impedes the attainment of this goal is rejected by Islam. Therefore, the system of bureaucracy, the result and product of old forms of government, will be firmly cast away, so that an executive system that functions efficiently and swiftly in the fulfillment of its administrative commitments comes into existence.

### **Mass-Communication Media**

The mass-communication media, radio and television, must serve the diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution. To this end, the media should be used as a forum for healthy encounter of different ideas, but they must strictly refrain from diffusion and propagation of destructive and anti-Islamic practices.

It is incumbent on all to adhere to the principles of this Constitution, for it regards as its highest aim the freedom and dignity of the human race and provides for the growth and development of the human being. It is also necessary that the Muslim people should participate actively in the construction of Islamic society by selecting competent and believing officials and keeping close and constant watch on their performance. They may then hope for success in building an ideal Islamic society that can be a model for all people of the world and a witness to its perfection (in accordance with the Koranic verse "Thus We made you a median community, that you might be witnesses to men" [2:143]).

### **Representatives**

The Assembly of Experts, composed of representatives of the people, completed its task of framing the Constitution, on the basis of the draft proposed by the Government as well as all the proposals received from different groups of the people, in one hundred and seventy-five articles arranged in twelve chapters, in 1979, and in accordance with the aims and aspirations set out above, with the hope that this century will witness the establishment of a universal holy government and the downfall of all others.

## **CHAPTER I**

### **GENERAL PRINCIPLES**

1. The form of Government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Qur'anic justice, in the referendum of Farwardin 9 and 10 in the year 1358 of the solar Islamic calendar, corresponding to Jamadī al-Awwal 1 and 2 in the year 1399 of the lunar Islamic calendar (March 29 and

30, 1979], through the affirmative vote of a majority of 98.2% of eligible voters, held after the victorious Islamic Revolution led by the eminent marji' al-taqlid, Ayatullah al-Uzma Imam Khomeini

## 2. The Islamic Republic is a system based on belief in:

- 1 the One God (as stated in the phrase "There is no God except Allah"), His exclusive sovereignty and the right to legislate, and the necessity of submission to His commands,

- 2 divine revelation and its fundamental role in setting forth the laws,

- 3 the return to God in the Hereafter, and the constructive role of this belief in the course of man's ascent towards God,

- 4 the justice of God in creation and legislation,

- 5 continuous leadership (imamah) and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam,

- 6 the exalted dignity and value of man, and his freedom coupled with responsibility before God, in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to

- 1 continuous ijtihad of the fuqaha' possessing necessary qualifications, exercised on the basis of the Qur'an and the Sunnah of the Ma'sumun, upon all of whom be peace,

- 2 sciences and arts and the most advanced results of human experience, together with the effort to advance them further,

- 3 negation of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and its acceptance

3. In order to attain the objectives specified in Article 2, the Government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals

- 1 the creation of a favorable environment for the growth of moral virtues based on faith and piety and the struggle against all forms of vice and corruption,

- 2 raising the level of public awareness in all areas, through the proper use of the press, mass media, and other means,

- 3 free education and physical training for everyone at all levels, and the facilitation and expansion of higher education,

- 4 strengthening the spirit of inquiry, investigation, and innovation in all areas of science, technology, and culture, as well as Islamic studies, by establishing research centers and encouraging researchers,

- 5 the complete elimination of imperialism and the prevention of foreign influence,

- 6 the elimination of all forms of despotism and autocracy and all attempts to monopolize power,

7 ensuring political and social freedoms within the framework of the law,

8 the participation of the entire people in determining their political, economic, social, and cultural destiny,

9 the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres,

10 the creation of a correct administrative system and elimination of superfluous government organizations,

11 all round strengthening of the foundations of national defence to the utmost degree by means of universal military training for the sake of safeguarding the independence, territorial integrity, and the Islamic order of the country,

12 the planning of a correct and just economic system, in accordance with Islamic criteria in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all,

13 the attainment of self-sufficiency in scientific, technological, industrial, agricultural, and military domains, and other similar spheres,

14 securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law,

15 the expansion and strengthening of Islamic brotherhood and public cooperation among all the people,

16 framing the foreign policy of the country on the basis of Islamic criteria, fraternal commitment to all Muslims, and unsparing support to the mustad'afin of the world

4. All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all Articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter

5. During the Occultation of the Wali al-Asr (may God hasten his reappearance), the wilayah and leadership of the Ummah devolve upon the just ['adil] and pious [muttaqi] faqih, who is fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107.

6. In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of Councils, or by means of referenda in matters specified in other Articles of this Constitution

7. In accordance with the command of the Qur'an contained in the verse ("Their affairs are by consultations among them" [42:38]) and ("Consult them

in affairs" [3 159]), consultative bodies—such as the Islamic Consultative Assembly, the Provincial Councils, and the City, Region, District, and Village Councils and the likes of them—are the decision-making and administrative organs of the country

The nature of each of these councils, together with the manner of their formation, their jurisdiction, and scope of their duties and functions, is determined by the Constitution and laws derived from it

8. In the Islamic Republic of Iran, *al-'amr bilma'ruf wa al-nahy 'an al munkar* is a universal and reciprocal duty that must be fulfilled by the people with respect to one another, by the Government with respect to the people, and by the people with respect to the Government. The conditions, limits, and nature of this duty will be specified by law. (This is in accordance with the Qur'anic verse, "The believers, men and women, are guardians of one another, they enjoin the good and forbid the evil" [9 71])

9. In the Islamic Republic of Iran, the freedom, independence, unity, and territorial integrity of the country are inseparable from one another, and their preservation is the duty of the Government and all individual citizens. No individual, group, or authority, has the right to infringe in the slightest way upon the political, cultural, economic, and military independence or the territorial integrity of Iran under the pretext of exercising freedom. Similarly, no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country.

10. Since the family is the fundamental unit of Islamic society, all laws, regulations, and pertinent programmes must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam.

11. In accordance with the sacred verse of the Qur'an ("This your community is a single community, and I am your Lord, so worship Me" [21 92]), all Muslims form a single nation, and the Government of the Islamic Republic of Iran has the duty of formulating its general policies with a view to cultivating the friendship and unity of all Muslim peoples, and it must constantly strive to bring about the political, economic, and cultural unity of the Islamic world.

12. The official religion of Iran is Islam and the Twelver Ja'fari school [in usual *al-Din* and *fiqh*], and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of *fiqh* constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of *fiqh*, without infringing upon the rights of the followers of other schools.

13. Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education

14. In accordance with the sacred verse, ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60 8]), the Government of the Islamic Republic of Iran and all Muslims are duty bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran

## CHAPTER II

### THE OFFICIAL LANGUAGE, SCRIPT, CALENDAR, AND FLAG OF THE COUNTRY

15. The official language and script of Iran, the *lingua franca* of its people, is Persian Official documents, correspondence, and texts, as well as text-books, must be in this language and script However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian

16. Since the language of the Qur'an and Islamic texts and teachings is Arabic, and since Persian literature is thoroughly permeated by this language, it must be taught after elementary level, in all classes of secondary school and in all areas of study

17. The official calendar of the country takes as its point of departure the migration of the Prophet of Islam - God's peace and blessings upon him and his Family Both the solar and lunar Islamic calendars are recognized, but Government offices will function according to the solar calendar The official weekly holiday is Friday

18. The official flag of Iran is composed of green, white and red colours with the special emblem of the Islamic Republic, together with the motto "Allah-o Akbar"

## CHAPTER III

### THE RIGHTS OF THE PEOPLE

19. All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights, and colour, race, language, and the like, do not bestow any privilege

20. All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria

21. The Government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals

1 create a favorable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual,

2 the protection of mothers, particularly during pregnancy and childbearing, and the protection of children without guardians,

3 establishing competent courts to protect and preserve the family,

4 the provision of special insurance for widows, and aged women and women without support,

5 the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian

22. The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law

23 The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief

24. Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law

25. The inspection of letters and the failure to deliver them, the recording and disclosure of telephone conversations, the disclosure of telegraphic and telex communications, censorship, or the willful failure to transmit them, eaves dropping, and all forms of covert investigation are forbidden, except as provided by law

26. The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic republic. No one may be prevented from participating in the afore mentioned groups, or be compelled to participate in them

27. Public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam

28. Everyone has the right to choose any occupation he wishes, if it is not contrary to Islam and the public interests, and does not infringe the rights of others

The Government has the duty, with due consideration of the need of society for different kinds of work, to provide every citizen with the opportunity to work, and to create equal conditions for obtaining it

29. To benefit from social security with respect to retirement, unemployment, old age, disability, absence of a guardian, and benefits relating to being stranded, accidents, health services, and medical care and treatment, provided through insurance or other means, is accepted as a universal right

The Government must provide the foregoing services and financial support for every individual citizen by drawing, in accordance with the law, on the national revenues and funds obtained through public contributions

30. The Government must provide all citizens with free education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency

31. It is the right of every Iranian individual and family to possess housing commensurate with his needs. The Government must make land available for the implementation of this Article, according priority to those whose need is greatest, in particular the rural population and the workers

32. No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this Article will be liable to punishment in accordance with the law

33. No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases provided by law

34. It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse

35. Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel

36. The passing and execution of a sentence must be only by a competent court and in accordance with law

37. Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court

38. All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible, and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this Article is liable to punishment in accordance with the law

39. All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment

40. No one is entitled to exercise his rights in a way injurious to others or detrimental to public interests

41. Iranian citizenship is the indisputable right of every Iranian, and the Government cannot withdraw citizenship from any Iranian unless he himself requests it or acquires the citizenship of another country

42. Foreign nationals may acquire Iranian citizenship within the framework of the laws. Citizenship may be withdrawn from such persons if another State accepts them as its citizens or if they request it.

#### **CHAPTER IV**

#### **ECONOMY AND FINANCIAL AFFAIRS**

43. The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. the provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education, and the necessary facilities for the establishment of a family,

2. ensuring conditions and opportunities of employment for everyone, with a view to attaining full employment, placing the means of work at the disposal of everyone who is able to work but lacks the means, in the form of cooperatives, through granting interest free loans or recourse to any other legitimate means that neither results in the concentration or circulation of wealth in the hands of a few individuals or groups, nor turns the Government into a major absolute employer. These steps must be taken with due regard for the requirements governing the general economic planning of the country at each stage of its growth,

3. the plan for the national economy, must be structured in such a manner that the form, content, and hours of work of every individual will allow him sufficient leisure and energy to engage, beyond his professional endeavour, in intellectual, political, and social activities leading to all-round development of his self, to take active part in leading the affairs of the country, improve his skills, and to make full use of his creativity,

4. respect for the right to choose freely one's occupation, refraining from compelling anyone to engage in a particular job, and preventing the exploitation of another's labor,

5. the prohibition of infliction of harm and loss upon others, monopoly, hoarding, usury, and other illegitimate and evil practices,

6. the prohibition of extravagance and wastefulness in all matters related to the economy, including consumption, investment, production, distribution, and services,

7. the utilization of science and technology, and the training of skilled personnel in accordance with the developmental needs of the country's economy,

8. prevention of foreign economic domination over the country's economy,

9 emphasis on increase of agricultural, livestock, and industrial production in order to satisfy public needs and to make the country self-sufficient and free from dependence

44. The economy of the Islamic Republic of Iran is to consist of three sectors State, cooperative, and private, and is to be based on systematic and sound planning

The State sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like, all these will be publicly owned and administered by the State

The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria

The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the State and cooperative sectors

Ownership in each of these three sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other Articles of this Chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country, and does not harm society

The [precise] scope of each of these sectors, as well as the regulations and conditions governing their operation, will be specified by law

45. Public wealth and property, such as uncultivated or abandoned land, mineral deposits, seas, lakes, rivers and other public waterways, mountains, valleys, forests, marshlands, natural forests, unenclosed pastureland, legacies without heirs, property of undetermined ownership, and public property recovered from usurpers, shall be at the disposal of the Islamic Government for it to utilize in accordance with the public interest. Law will specify detailed procedures for the utilization of each of the foregoing items

46. Everyone is the owner of the fruits of his legitimate business and labour, and no one may deprive another of the opportunity of business and work under the pretext of his right to ownership

47. Private ownership, legitimately acquired, is to be respected. The relevant criteria are determined by law

48. There must be no discrimination among the various provinces with regard to the exploitation of natural resources, utilization of public revenues, and distribution of economic activities among the various provinces and regions of the country, thereby ensuring that every region has access to the necessary capital and facilities in accordance with its needs and capacity for growth

49. The Government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft,

gambling, misuse of endowments, misuse of Government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centers of corruption, and other illicit means and sources, and restoring it to its legitimate owner, and if no such owner can be identified, it must be entrusted to the public treasury. This rule must be executed by the Government with due care, after investigation and furnishing necessary evidence in accordance with the law of Islam.

50. The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden.

51. No form of taxation may be imposed except in accordance with the law. Provisions for tax exemption and reduction will be determined by law.

52. The annual budget of the country will be drawn up by the Government, in the manner specified by law, and submitted to the Islamic Consultative Assembly for discussion and approval. Any change in the figures contained in the budget will be in accordance with the procedures prescribed by law.

53. All sums collected by the Government will be deposited into the Government accounts at the central treasury, and all disbursements, within the limits of allocations approved, shall be made in accordance with law.

54. The National Accounting Agency is to be directly under the supervision of the Islamic Consultative Assembly. Its organization and mode of operation in Tehran and at the provincial capitals, are to be determined by law.

55. The National Accounting Agency will inspect and audit, in the manner prescribed by law, all the accounts of Ministries, Government institutions and companies as well as other organizations that draw, in any way, on the general budget of the country, to ensure that no expenditure exceeds the allocations approved and that all sums are spent for the specified purpose. It will collect all relevant accounts, documents, and records, in accordance with law, and submit to the Islamic Consultative Assembly a report for the settlement of each year's budget together with its own comments. This report must be made available to the public.

## *CHAPTER V*

### **THE RIGHT OF NATIONAL SOVEREIGNTY**

56. Absolute sovereignty over the world and man belongs to God, and it is He who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following Articles.

57. The powers of Government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute wilayat al-'amr and the leadership of the Ummah, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other.

58. The function of the legislature are to be exercised through the Islamic Consultative Assembly, consisting of the elected representatives of the people. Legislation approved by this body, after going through the stages specified in the Articles below, is communicated to the executive and the judiciary for implementation.

59. In extremely important economic, political, social, and cultural matters, the function of the legislature may be exercised through direct recourse to popular vote through a referendum. Any request for such direct recourse to public opinion must be approved by two-thirds of the members of the Islamic Consultative Assembly.

60. The functions of the executive, except in the matters that are directly placed under the jurisdiction of the leadership by the Constitution, are to be exercised by the President and the Ministers.

61. The function of the judiciary are to be performed by courts of justice, which are to be formed in accordance with the criteria of Islam, and are vested with the authority to examine and settle law suits, protect the rights of the public, dispense and enact justice, and implement the Divine limits [al-hudud al-'ilahiyyah].

## CHAPTER VI

### THE LEGISLATIVE POWERS

62. The Islamic Consultative Assembly is constituted by the representatives of the people elected directly and by secret ballot. The qualifications of voters and candidates, as well as the nature of election, will be specified by law.

63. The term of membership in the Islamic Consultative Assembly is four years. Elections for each term must take place before the end of the preceding term, so that the country is never without an Assembly.

64. There are to be two hundred seventy members of the Islamic Consultative Assembly which, keeping in view the human, political, geographic and other similar factors, may increase by not more than twenty for each ten-year period from the date of the national referendum of the year 1368 of the solar Islamic calendar.

The Zoroastrians and Jews will each elect one representative, Assyrian and Chaldean Christians will jointly elect one representative, and Armenian Christians in the north and those in the south of the country will each elect one representative.

The limits of the election constituencies and the number of representatives will be determined by law.

65. After the holding of elections, sessions of the Islamic Consultative Assembly are considered legally valid when two-thirds of the total number of members are present. Drafts and Bills will be approved in accordance with the code of procedure approved by it, except in cases where the Constitution has specified a certain quorum.

The consent of two-thirds of all members present is necessary for the approve of the code of procedure of the Assembly.

66. The manner of election of the Speaker and the Presiding Board of the Assembly, the number of committees and their term of office, and matters related to conducting the discussions and maintaining the discipline of the Assembly will be determined by the code of procedure of the Assembly.

67. Members of the Assembly must take the following oath at the first session of the Assembly and affix their signatures to its text:

"In the Name of God, the Compassionate, the Merciful. In the presence of the Glorious Qur'an, I swear by God, the Exalted and Almighty, and undertake, swearing by my own honour as a human being, to protect the sanctity of Islam and guard the accomplishments of the Islamic Revolution of the Iranian people and the foundations of the Islamic Republic, to protect, as a just trustee, the honour bestowed upon me by the people, to observe piety in fulfilling my duties as people's representative, to remain always committed to the independence and honour of the country, to fulfil my duties towards the nation and the service of the people, to defend the Constitution, and to bear in mind, both in speech and writing and in the expression of my views, the independence of the country, the freedom of the people, and the security of their interests."

Members belonging to the religious minorities will swear by their own sacred books while taking this oath.

Members not attending the first session will perform the ceremony of taking the oath at the first session they attend.

68. In time of war and the military occupation of the country, elections due to be held in occupied areas or countrywide may be delayed for a specified period if proposed by the President of the Republic, and approved by three-fourths of the total members of the Islamic Consultative Assembly, with the endorsement of the Guardian Council. If a new Assembly is not formed, the previous one will continue to function.

69. The deliberations of the Islamic Consultative Assembly must be open, and full minutes of them made available to the public by the radio and the official gazette. A closed session may be held in emergency conditions, if it is required for national security, upon the requisition of the President, one of the ministers, or ten members of the Assembly. Legislation passed at a closed session is valid only when approved by three-fourths of the members in the presence of the Guardian Council. After emergency conditions have ceased to exist, the minutes of such closed sessions, together with any legislation approved in them, must be made available to the public.

70. The President, his deputies and the Ministers have the right to participate in the open sessions of the Assembly either collectively or individually. They may also have their advisers accompany them. If the members of the Assembly deem it necessary, the Ministers are obliged to attend [Conversely], whenever they request it, their statements are to be heard.

71. The Islamic Consultative Assembly can establish laws on all matters, within the limits of its competence as laid down in the Constitution.

72. The Islamic Consultative Assembly cannot enact laws contrary to the usual and *ahkam* of the official religion of the country or to the Constitution. It is the duty of the Guardian Council to determine whether a violation has occurred, in accordance with Article 96.

73. The interpretation of ordinary laws falls within the competence of the Islamic Consultative Assembly. The intent of this Article does not prevent the interpretations that Judges may make in the course of cassation.

74. Government Bills are presented to the Islamic Consultative Assembly after receiving the approval of the Council of Ministers. Members' Bills may be introduced in the Islamic Consultative Assembly if sponsored by at least fifteen members.

75. Members' Bills and proposals and amendments to Governments Bills proposed by members that entail the reduction of the public income or the increase of public expenditure may be introduced in the Assembly only if means for compensating for the decrease in income or for meeting the new expenditure are also specified.

76. The Islamic Consultative Assembly has the right to investigate and examine all the affairs of the country.

77. International treaties, protocols, contracts, and agreements must be approved by the Islamic Consultative Assembly.

78. All changes in the boundaries of the country are forbidden, with the exception of minor amendments in keeping with the interests of the country, on condition that they are not unilateral, do not encroach on the independence and territorial integrity of the country, and receive the approval of four-fifths of the total members of the Islamic Consultative Assembly.

79. The proclamation of martial law is forbidden. In case of war or emergency conditions akin to war, the Government has the right to impose temporarily certain necessary restrictions, with the agreement of the Islamic Consultative Assembly. In no case can such restrictions last for more than thirty days, if the need for them persists beyond this limit, the Government must obtain new authorization for them from the Assembly.

80. The taking and giving of loans or grants-in-aid, domestic and foreign, by the Government, must be approved by the Islamic Consultative Assembly.

81. The granting of concessions to foreigners for the formation of companies or institutions dealing with commerce, industry, agriculture, services or mineral extraction, is absolutely forbidden.

82. The employment of foreign experts is forbidden, except in cases of necessity and with the approval of the Islamic Consultative Assembly

83. Government buildings and properties forming part of the national heritage cannot be transferred except with the approval of the Islamic Consultative Assembly, that, too, is not applicable in the case of irreplaceable treasures

84. Every representative is responsible to the entire nation and has the right to express his views on all internal and external affairs of the country

85. The right of membership is vested with the individual, and is not transferable to others. The Assembly cannot delegate the power of legislation to an individual or committee. But whenever necessary, it can delegate the power of legislating certain laws to its own committees, in accordance with Article 72. In such a case, the laws will be implemented on a tentative basis for a period specified by the Assembly, and their final approval will rest with the Assembly

Likewise, the Assembly may, in accordance with Article 72, delegate to the relevant committees the responsibility for permanent approval of articles of association of organizations, companies, Government institutions, or organizations affiliated to the Government and or invest the authority in the Government. In such a case, the Government approvals must not be inconsistent with the principles and commandments of the official religion in the country and or the Constitution which question shall be determined by the Guardian Council in accordance with what is stated in Article 96. In addition to this, the Government approvals shall not be against the laws and other general rules of the country and, while calling for implementation, the same shall be brought to the knowledge of the Speaker of the Islamic Consultative Assembly for its study and indication that the approvals in question are not inconsistent with the aforesaid rules

86. Members of the Assembly are completely free in expressing their views and casting their votes in the course of performing their duties as representatives, and they cannot be prosecuted or arrested for opinions expressed in the Assembly or votes cast in the course of performing their duties as representatives

87. The President must obtain, for the Council of Ministers, after being formed and before all other business, a vote of confidence from the Assembly. During his incumbency, he can also seek a vote of confidence for the Council of Ministers from the Assembly on important and controversial issues

88. Whenever at least one-fourth of the total members of the Islamic Consultative Assembly pose a question to the President, or any one member of the Assembly poses a question to a Minister on a subject relating to their duties, the President or the Minister is obliged to attend the Assembly and answer the question. This answer must not be delayed more than one month in the case of the President and ten days in the case of the Minister, except with an excuse deemed reasonable by the Islamic Consultative Assembly

89. 1 Members of the Islamic Consultative Assembly can interpolate the Council of Ministers or an individual Minister in instances they deem necessary. Interpolations can be tabled if they bear the signatures of at least ten members. The Council of Ministers or interpolated Minister must be present in the Assembly within ten days after the tabling of the interpolation in order to answer it and seek a vote of confidence. If the Council of Ministers or the Minister concerned fails to attend the Assembly, the members who tabled the interpolation will explain their reasons, and the Assembly will declare a vote of no-confidence if it deems it necessary. If the Assembly does not pronounce a vote of confidence, the Council of Ministers or the Minister subject to interpolation is dismissed. In both cases, the Ministers subject to interpolation cannot become members of the next Council of Ministers formed immediately afterwards.

2 In the event at least one-third of the members of the Islamic Consultative Assembly interpolate the President concerning his executive responsibilities in relation with the executive power and the executive affairs of the country, the President must be present in the Assembly within one month after the tabling of the interpolation in order to give adequate explanations in regard to the matters raised. In the event, after hearing the statements of the opposing and favoring members and the reply of the President, two-thirds of the members of the Assembly declare a vote of no confidence, the same will be communicated to the Leadership for information and implementation of section (10) of Article 110 of the Constitution.

90. Whoever has a complaint concerning the work of the Assembly or the executive power, or the judicial power can forward his complaint in writing to the Assembly. The Assembly must investigate his complaint and give a satisfactory reply. In cases where the complaint relates to the executive or the judiciary, the Assembly must demand proper investigation in the matter and an adequate explanation from them, and announce the results within a reasonable time. In cases where the subject of the complaint is of public interest, the reply must be made public.

91. With a view to safeguard the Islamic ordinances and the Constitution, in order to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam, a council to be known as the Guardian Council is to be constituted with the following composition:

1 six 'adil fuqaha' conscious of the present needs and the issues of the day, to be selected by the Leader, and

2 six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly from among the Muslim jurists nominated by the Head of the judicial power.

92. Members of the Guardian Council are elected to serve for a period of six years, but during the first term, after three years have passed, half of the members of each group will be changed by lot and new members will be elected in their place.

93. The Islamic Consultative Assembly does not hold any legal status if there is no Guardian Council in existence, except for the purpose of approving the credentials of its members and the election of three six jurists on the Guardian Council

94. All legislation passed by the Islamic Consultative Assembly must be sent to the Guardian Council. The Guardian Council must review it within a maximum of ten days from its receipt with a view to ensuring its compatibility with the criteria of Islam and the Constitution. If it finds the legislation incompatible, it will return it to the Assembly for review. Otherwise the legislation will be deemed enforceable.

95. In cases where the Guardian Council deems ten days inadequate for completing the process of review and delivering a definite opinion, it can request the Islamic Consultative Assembly to grant an extension of the time limit not exceeding ten days.

96. The determination of compatibility of the legislation passed by the Islamic Consultative Assembly with the laws of Islam rests with the majority vote of the *fuqaha'* on the Guardian Council, and the determination of its compatibility with the Constitution rests with the majority of all the members of the Guardian Council.

97. In order to expedite the work, the members of the Guardian Council may attend the Assembly and listen to its debates when a Government Bill or a members' Bill is under discussion. When an urgent Government or members' Bill is placed on the agenda of the Assembly, the members of the Guardian Council must attend the Assembly and make their views known.

98. The authority of the interpretation of the Constitution is vested with the Guardian Council, which is to be done with the consent of three-fourths of its members.

99. The Guardian Council has the responsibility of supervising the elections of the Assembly of Experts for Leadership, the President of the Republic, the Islamic Consultative Assembly, and the direct recourse to popular opinion and referenda.

## **CHAPTER VII**

### **COUNCILS**

100. In order to expedite social, economic, development, public health, cultural, and educational programs and facilitate other affairs relating to public welfare with the cooperation of the people according to local needs, the administration of each village, division, city, municipality, and province will be supervised by a council to be named the Village, Division, City, Municipality, or Provincial Council. Members of each of these councils will be elected by the people of the locality in question.

Qualifications for the eligibility of electors and candidates for these Councils, as well as their functions and powers, the mode of election, the jurisdiction of these Councils, the hierarchy of their authority, will be

determined by law, in such a way as to preserve national unity, territorial integrity, the system of the Islamic Republic, and the sovereignty of the Central Government

101. In order to prevent discrimination in the preparation of programmes for the development and welfare of the provinces, to secure the cooperation of the people, and to arrange for the supervision of coordinated implementation of such programmes, a Supreme Council of the Provinces will be formed, composed of representatives of the Provincial Councils

Law will specify the manner in which this council is to be formed and the functions that it is to fulfil

102. The Supreme Council of the Provinces has the right within its jurisdiction, to draft bills and to submit them to the Islamic Consultative Assembly, either directly or through the Government. These Bills must be examined by the Assembly

103. Provincial Governors, city Governors, divisional Governors, and other officials appointed by the Government must abide by all decisions taken by the Councils within their jurisdiction

104. In order to ensure Islamic equity and cooperation in chalking out the programmes and to bring about the harmonious progress of all units of production, both industrial and agricultural, Councils consisting of the representatives of the workers, peasants, other employees, and managers, will be formed in educational and administrative units, units of service industries, and other units of a like nature, similar Councils will be formed, composed of representatives of the members of those units

The mode of the formation of these Councils and the scope of their functions and powers, are to be specified by law

105. Decisions taken by the Councils must not be contrary to the criteria of Islam and the laws of the country

106. The Councils may not be dissolved unless they deviate from their legal duties. The body responsible for determining such deviation, as well as the manner for dissolving the Councils and re-forming them, will be specified by law

Should a council have any objection to its dissolution, it has the right to appeal to a competent court, and the court is duty-bound to examine its complaint outside the docket sequence

## CHAPTER VIII

### THE LEADER OR LEADERSHIP COUNCIL

107. After the demise of the eminent marji' al-taqlid and great leader of the universal Islamic revolution, and founder of the Islamic Republic of Iran, Ayatullah al-'Uzma Imam Khomeini—quddisa sirruh al-sharif—who was recognized and accepted as marji' and Leader by a decisive majority of the people, the task of appointing the Leader shall be vested with the experts elected by the people. The experts will review and consult among themselves

concerning all the *fuqaha*' possessing the qualifications specified in Articles 5 and 109. In the event they find one of them better versed in Islamic regulations, the subjects of the *fiqh*, or in political and social issues, or possessing general popularity or special prominence for any of the qualifications mentioned in Article 109, they shall elect him as the Leader. Otherwise, in the absence of such a superiority, they shall elect and declare one of them as the Leader. The Leader thus elected by the Assembly of Experts shall assume all the powers of the *wilayat al-amr* and all the responsibilities arising therefrom.

The Leader is equal with the rest of the people of the country in the eyes of law.

108. The law setting out the number and qualifications of the experts [mentioned in, the preceding article], the mode of their election, and the code of procedure regulating the sessions during the first term must be drawn up by the *fuqaha*' on the first Guardian Council, passed by a majority of votes and then finally approved by the Leader of the Revolution. The power to make any subsequent change or a review of this law, or approval of all the provisions concerning the duties of the experts is vested in themselves.

109. Following are the essential qualifications and conditions for the Leader.

1. scholarship, as required for performing the functions of *mufti* in different fields of *fiqh*,

2. justice and piety, as required for the leadership of the Islamic Ummah,

3. right political and social perspicacity, prudence, courage, administrative facilities and adequate capability for leadership. In case of multiplicity of persons fulfilling the above qualifications and conditions, the person possessing the better jurisprudential and political perspicacity will be given preference.

110. Following are the duties and powers of the Leadership

1. Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Exigency Council

2. Supervision over the proper execution of the general policies of the system

3. Issuing decrees for national referenda

4. Assuming supreme command of the armed forces

5. Declaration of war and peace, and the mobilization of the armed forces

6. Appointment, dismissal, and acceptance of resignation of

- a. the *fuqaha* on the Guardian Council

- b. the supreme judicial authority of the country,

- c. the head of the radio and television network of the Islamic Republic of Iran,

d the chief of the joint staff,

e the chief commander of the Islamic Revolution Guards Corps,

f the supreme commanders of the armed forces,

g Resolving differences between the three wings of the armed forces and regulation of their relations

h Resolving the problems, which cannot be solved by conventional methods, through the Nation's Exigency Council

i Signing the decree formalizing the election of the President of the Republic by the people. The suitability of candidates for the Presidency of the Republic, with respect to the qualifications specified in the Constitution, must be confirmed before elections take place by the Guardian Council, and, in the case of the first term [of the Presidency], by the Leadership,

j Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after a vote of the Islamic Consultative Assembly testifying to his incompetence on the basis of Article 89 of the Constitution

k Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation [to that effect] from the Head of judicial power. The Leader may delegate part of his duties and powers to another person

111. Whenever the Leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in Articles 5 and 109, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed. The authority of determination in this matter is vested with the experts specified in Article 108.

In the event of the death, or resignation or dismissal of the Leader, the experts shall take steps within the shortest possible time for the appointment of the new Leader. Till the appointment of the new Leader, a Council consisting of the President, head of the judicial power, and a faqih from the Guardian Council, upon the decision of the Nation's Exigency Council, shall temporarily take over all the duties of the Leader. In the event, during this period, any one of them is unable to fulfil his duties for whatsoever reason, another person, upon the decision of majority of fuqaha' in the Nation's Exigency Council shall be elected in his place.

This Council shall take action in respect of items 1, 3, 5, and 10, and sections d, e and f of item 6 of Article 110, upon the decision of three-fourths of the members of the Nation's Exigency Council.

Whenever the Leader becomes temporarily unable to perform the duties of leadership owing to his illness or any other incident, then during this period, the council mentioned in this Article shall assume his duties.

112. Upon the order of the Leader, the Nation's Exigency Council shall meet at any time the Guardian Council judges a proposed Bill of the Islamic

Consultative Assembly to be against the principles of Shariah or the Constitution, and the Assembly is 'unable to meet the expectations of the Guardian Council. Also, the Council shall meet for consideration on any issue forwarded to it by the Leader and shall carry out any other responsibility as mentioned in this Constitution.

The permanent and changeable members of the Council shall be appointed by the Leader. The rules for the Council shall be formulated and approved by the Council members subject to the confirmation by the Leader.

## **CHAPTER IX**

### **THE EXECUTIVE POWER**

113. After the office of Leadership, the President is the highest official in the country. His is the responsibility for implementing the Constitution and acting as the head of the executive, except in matters directly concerned with (the office of) the Leadership.

114. The President is elected for a four year term by the direct vote of the people. His re-election for a successive term is permissible only once.

115. The President must be elected from among religious and political personalities possessing the following qualifications:

Iranian origin, Iranian nationality, administrative capacity and resourcefulness, a good past-record, trustworthiness and piety, convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab of the country.

116. Candidates nominated for the post of President must declare their candidature officially. Law lays down the manner in which the President is to be elected.

117. The President is elected by an absolute majority of votes polled by the voters. But if none of the candidates is able to win such a majority in the first round, voting will take place a second time on Friday of the following week. In the second round only the two candidates who received greatest number of votes in the first round will participate. If, however, some of the candidates securing greatest votes in the first round withdraw from the elections, the final choice will be between the two candidates who won greater number of votes than all the remaining candidates.

118. Responsibility for the supervision of the election, of the President lies with the Guardian Council, as stipulated in Article 99. But before the establishment of the first Guardian Council, however, it lies with a supervisory body to be constituted by law.

119. The election of a new President must take place no later than one month before the end of the term of the outgoing President. In the interim period before the election of the new President and the end of the term of the outgoing President, the outgoing President will perform the duties of the President.

120. In case any of the candidates whose suitability is established in terms of the qualifications listed above should die within ten days before polling day, the elections will be postponed for two weeks. If one of the candidates securing greatest number of votes dies in the intervening period between the first and second rounds of voting, the period for holding (the second round of) the election will be extended for two weeks.

121. The President must take the following oath and affix his signature to it at a session of the Islamic Consultative Assembly in the presence of the head of the judicial power and the members of the Guardian Council:

"In, the Name of God, the Compassionate, the Merciful, I, as President, swear, in the presence of the Noble Qur'an and the people of Iran, by God, the Exalted and Almighty, that I will guard the official religion of the country, the order of the Islamic Republic and the Constitution of the country, that I will devote all my capacities and abilities to the fulfillment of the responsibilities that I have assumed, that I will dedicate myself to the service of the people, the honour of the country, the propagation of religion and morality, and the support of truth and justice, refraining from every kind of arbitrary behavior, that I will protect the freedom and dignity of all citizens and the rights that the Constitution has accorded the people, that in guarding the frontiers and the political, economic, and cultural independence of the country I will not shirk any necessary measure, that, seeking help from God and following the Prophet of Islam and the infallible Imams (peace be upon them), I will guard, as a pious and selfless trustee, the authority vested in me by the people as a sacred trust, and transfer it to whomever the people may elect after me."

122. The President, within the limits of his powers and duties, which he has by virtue of this Constitution or other laws, is responsible to the people, the Leader and the Islamic Consultative Assembly.

123. The President is obliged to sign legislation approved by the Assembly or the result of a referendum, after the (related) legal procedures have been completed and it has been communicated to him. After signing, he must forward it to the responsible authorities for implementation.

124. The President may have Deputies for the performance of his constitutional duties.

With the approval of the President, the first Deputy of the President shall be vested with the responsibilities of administering the affairs of the Council of Ministers and coordination of functions of other Deputies.

125. The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian Government with other Governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly.

126. The President is responsible for national planning and budget and State employment affairs and may entrust the administration of these to others.

127. In special circumstances, subject to approval of the Council of Ministers the President may appoint one or more special representatives with specific powers. In such cases, the decisions of his representative(s) will be considered as the same as those of the President and the Council of Ministers.

128. The Ambassadors shall be appointed upon the recommendation of the Foreign Minister and approval of the President. The President signs the credentials of Ambassadors and receives the credentials presented by the ambassadors of the foreign countries.

129. The award of State decorations is a prerogative of the President.

130. The President shall submit his resignation to the Leader and shall continue performing his duties until his resignation is not accepted.

131. In case of death, dismissal, resignation, absence, or illness lasting longer than two months of the President, or when his term in office has ended and a new President has not been elected due to some impediments, or similar other circumstances, his first Deputy shall assume, with the approval of the Leader, the powers and functions of the President. The Council, consisting of the Speaker of the Islamic Consultative Assembly, head of the judicial power, and the first Deputy of the President, is obliged to arrange for a new President to be elected within a maximum period of fifty days. In case of death of the first Deputy to the President, or other matters which prevent him to perform his duties, or when the President does not have a first Deputy, the Leader shall appoint another person in his place.

132. During the period when the powers and responsibilities of the President are assigned to his first Deputy or the other person in accordance with Article 131, neither can the Ministers be interpolated nor can a vote of no-confidence be passed against them. Also, neither can any step be undertaken for a review of the Constitution, nor a national referendum be held.

133. Ministers will be appointed by the President and will be presented to the Assembly for a vote of confidence. With the change of Assembly, a new vote of confidence will not be necessary. The number of Ministers and the jurisdiction of each will be determined by law.

134. The President is the head of the Council of Ministers. He supervises the work of the Ministers and takes all necessary measures to coordinate the decisions of the Government. With the cooperation of the Ministers, he determines the programme and policies of the Government and implements the laws.

In the case of discrepancies, or interferences in the constitutional duties of the Government agencies, the decision of the Council of Ministers at the request of the President shall be binding provided it does not call for an interpretation of or modification in the laws.

The President is responsible to the Assembly for the actions of the Council of Ministers.

135. The Ministers shall continue in office unless they are dismissed or given a vote of no-confidence by the Assembly as a result of their interpolation, or a motion for a vote of no-confidence against them.

The resignation of the Council of Ministers, or that of each of them shall be submitted to the President, and the Council of Ministers shall continue to function until such time as the new Government is appointed

The President can appoint a caretaker for a maximum period of three months for the Ministries having no Minister

136. The President can dismiss the Ministers and in such a case he must obtain a vote of confidence for the new Minister(s) from the Assembly In case half of the members of the Council of Ministers are changed after the Government has received its vote of confidence from the Assembly, the Government must seek a fresh vote of confidence from the Assembly

137. Each of the Ministers is responsible for his duties to the President and the Assembly, but in matters approved by the Council of Ministers as a whole, he is also responsible for the actions of the others

138. In addition to instances in which the Council of Ministers or a single Minister is authorized to frame procedures for the implementation of laws, the Council of Ministers has the right to lay down rules, regulations, and procedures for performing its administrative duties, ensuring the implementation of laws, and setting up administrative bodies Each of the Ministers also has the right to frame regulations and issue circular in matters within his jurisdiction and in conformity with the decisions of the Council of Ministers However, the content of all such regulations must not violate the letter or the spirit of the law

The Government can entrust any portion of its task to the Commissions composed of some Ministers The decisions of such Commissions within the rules will be binding after the endorsement of the President

The ratification and the regulations of the Government and the decisions of the Commissions mentioned under this Article shall also be brought to the notice of the Speaker of the Islamic Consultative Assembly while being communicated for implementation so that in the event he finds them contrary to law, he may send the same stating the reason for reconsideration by the Council of Ministers

139. The settlement, of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained Law will specify the important cases intended here

140. Allegations of common crimes against the President, his deputies, and the Ministers will be investigated in common courts of justice with the knowledge of the Islamic Consultative Assembly

141. The President, the Deputies to the President, Ministers, and Government employees cannot hold more than one Government position, and it is forbidden for them to hold any kind of additional post in institutions of which all or a part of the capital belongs to the Government or public institutions, to be a member of the Islamic Consultative Assembly, to practice

the profession of attorney or legal adviser, or to hold the post of President, Managing Director, or membership of the Board of Directors of any kind of private company, with the exception of cooperative companies affiliated to the Government departments and institutions

Teaching positions in universities and research institutions are exempted from this rule

142. The assets of the Leader, the President, the Deputies to the President, and Ministers, as well as those of their spouses and offspring, are to be examined before and after their term of office by the head of the judicial power, in order to ensure they have not increased in a fashion contrary to law

143. The Army of the Islamic Republic of Iran is responsible for guarding the independence and territorial integrity of the country, as well as the order of the Islamic Republic

144. The Army of the Islamic Republic of Iran must be an Islamic Army, i.e., committed to Islamic ideology and the people, and must recruit into its service individuals who have faith in the objectives of the Islamic Revolution and are devoted to the cause of realizing its goals

145. No foreigner will be accepted into the Army or security forces of the country

146. The establishment of any kind of foreign military base in Iran, even for peaceful purposes, is forbidden

147. In time of peace, the Government must utilize the personnel and technical equipment of the Army in relief operations, and for educational and productive ends, and the Construction Jihad, while fully observing the criteria of Islamic justice and ensuring that such utilization does not harm the combat-readiness of the Army

148. All forms of personal use of military vehicles, equipment, and other means, as well as taking advantage of Army personnel as personal servants and chauffeurs or in similar capacities, are forbidden.

149. Promotions in military rank and their withdrawal take place in accordance with the law

150. The Islamic Revolution Guards Corps, organized in the early days of the triumph of the Revolution, is to be maintained so that it may continue in its role of guarding the Revolution and its achievements. The scope of the duties of this Corps, and its areas of responsibility, in relation to the duties and areas of responsibility of the other armed forces, are to be determined by law, with emphasis on brotherly cooperation and harmony among them

151. In accordance with the noble Qur'anic verse  
(Prepare against them whatever force you are able to muster, and horses ready for battle, striking fear into God's enemy and your enemy, and others beyond them unknown to you but known to God [8:60])

The Government is obliged to provide a programme of military training, with all requisite facilities, for all its citizens, in accordance with the Islamic criteria, in such a way that all citizens will always be able to engage in the

armed defence of the Islamic Republic of Iran The possession of arms, however, requires the granting of permission by the competent authorities

## *CHAPTER X*

### **FOREIGN POLICY**

152. The foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination, both the exertion of it and submission to it, the preservation of the independence of the country in all respects and its territorial integrity, the defence of the rights of all Muslims, non-alignment with respect to the hegemonist superpowers, and the maintenance of mutually peaceful relations with all non-belligerent States

153. Any form of agreement resulting in foreign control over the natural resources, economy, army, or culture of the country, as well as other aspects of the national life, is forbidden

154. The Islamic Republic of Iran has as its ideal human felicity throughout human society, and considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the mustad'afun against the mustakbirun in every corner of the globe

155. The Government of the Islamic Republic of Iran may grant political asylum to those who seek it unless they are regarded as traitors and saboteurs according to the laws of Iran

## *CHAPTER XI*

### **THE JUDICIARY**

156. The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice, and entrusted with the following duties

- 1 investigating and passing judgement on grievances, violations of rights, and complaints, the resolving of litigation, the settling of disputes, and the taking of all necessary decisions and measures in probate matters as the law may determine,

- 2 restoring public rights and promoting justice and legitimate freedoms,

- 3 supervising the proper enforcement of laws,

- 4 uncovering crimes, prosecuting, punishing, and chastising criminals, and enacting the penalties and provisions of the Islamic penal code,

- 5 taking suitable measures to prevent the occurrence of crime and to reform criminals

**157.** In order to fulfil the responsibilities of the judiciary power in all the matters concerning judiciary, administrative and executive areas, the Leader shall appoint a just Muijtahid well versed in judiciary affairs and possessing prudence and administrative abilities as the head of the judiciary power for a period of five years who shall be the highest judicial authority

**158.** The head of the judiciary branch is responsible for the following

1 Establishment of the organizational structure necessary for the administration of justice commensurate with the responsibilities mentioned under Article 156

2 Drafting judiciary Bills appropriate for the Islamic Republic

3 Employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties, promotions and carrying out similar administrative duties, in accordance with the law

**159.** The courts of justice are the official bodies to which all grievances and complaints are to be referred. The formation of courts and their jurisdiction is to be determined by law

**160.** The Minister of Justice owes responsibility in all matters concerning the relationship between the judiciary, on the one hand, and the executive and legislative branches, on the other hand. He will be elected from among the individuals proposed to the President by the head of the judiciary branch

The head of the judiciary may delegate full authority to the Minister of Justice in financial and administrative areas and for employment of personnel other than judges in which case the Minister of Justice shall have the same authority and responsibility as those possessed by the other Ministers in their capacity as the highest ranking Government executives

**161.** The Supreme Court is to be formed for the purpose of supervising the correct implementation of the laws by the courts, ensuring uniformity of judicial procedure, and fulfilling any other responsibilities assigned to it by law, on the basis of regulations to be established by the head of the judicial branch

**162.** The chief of the Supreme Court and the Prosecutor-General must both be just muijtahids well versed in judicial matters. They will be nominated by the head of the judiciary branch for a period of five years, in consultation with the Judges of the Supreme Court

**163.** The conditions and qualifications to be fulfilled by a Judge will be determined by law, in accordance with the criteria of fiqh

**164.** A Judge cannot be removed, whether temporarily or permanently, from the post he occupies except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A Judge cannot be transferred or redesignated without his consent, except in cases when the interest of society necessitates it, that too, with the decision of the head of the judiciary branch after consultation with the chief of the Supreme Court and the Prosecutor-General. The periodic transfer and rotation of judges will be in accordance with general regulations to be laid down by law

165. Trials are to be held openly and members of the public may attend without any restriction, unless the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both the parties request not to hold open hearing

166. The verdicts of courts must be well reasoned out and documented with reference to the Articles and principles of the law in accordance with which they are delivered

167. The Judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic fatawa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement

168. Political and press offenses will be tried openly and in the presence of a jury, in courts of justice. The manner of the selection of the jury, its powers, and the definition of political offenses, will be determined by law in accordance with the Islamic criteria

169. No act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently

170. Judges of courts are obliged to refrain from executing statutes and regulations of the Government that are in conflict with the laws or the norms of Islam, or lie outside the competence of the executive power. Every one has the right to demand the annulment of any such regulation from the Court of Administrative Justice

171. Whenever an individual suffers moral or material loss as the result of a default or error of the Judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular case, the defaulting Judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default. Otherwise, losses will be compensated for by the State. In all such cases, the repute and good standing of the accused will be restored

172. Military courts will be established by law to investigate crimes committed in connection with military or security duties by members of the Army, the Gendarmerie, the police, and the Islamic Revolution Guards Corps. They will be tried in public courts, however, for common crimes or crimes committed while serving the department of justice in executive capacity. The office of military prosecutor and the military courts form part of the judiciary and are subject to the same principles that regulate the judiciary

173. In order to investigate the complaints, grievances, and objections of the people with respect to Government officials, organs, and statutes, a court will be established to be known as the Court of Administrative Justice under the supervision of the head of the judiciary branch. The jurisdiction, powers, and mode of operation of this Court will be laid down by law

174. In accordance with the right of the judiciary to supervise the proper conducting of affairs and the correct implementation of laws by the

administrative organs of the Government, an organization will be constituted under the supervision of the head of the judiciary branch to be known as the National General Inspectorate. The powers and duties of this organization will be determined by law.

## CHAPTER XII

### RADIO AND TELEVISION

175. The freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be guaranteed in keeping with the Islamic criteria and the best interests of the country.

The appointment and dismissal of the head of the Radio and Television of the Islamic Republic of Iran rests with the Leader. A Council consisting of two representatives each of the President, the head of the judiciary branch and the Islamic Consultative Assembly shall supervise the functioning of this organization.

The policies and the manner of managing the organization and its supervision will be determined by law.

## CHAPTER XIII

### SUPREME COUNCIL FOR NATIONAL SECURITY

176. In order to safeguarding the national interests and preserving the Islamic Revolution, the territorial integrity and national sovereignty, a Supreme Council for National Security presided over by the President shall be constituted to fulfil the following responsibilities:

1. Determining the defence and national security policies within the framework of general policies determined by the Leader.

2. Coordination of activities in the areas relating to politics, intelligence, social, cultural and economic fields in regard to general defence and security policies.

3. Exploitation of materialistic and intellectual resources of the country for facing the internal and external threats.

The Council shall consist of heads of three branches of the Government, chief of the Supreme Command Council of the Armed Forces, the officer in charge of the planning and budget affairs, two representatives nominated by the Leader, Ministers of Foreign Affairs, Interior, and Information, a Minister related with the subject, and the highest ranking officials from the Armed Forces and the Islamic Revolution's Guards Corps.

Commensurate with its duties, the Supreme Council for National Security shall form Sub-councils such as Defence Sub-council and National Security Sub-council. Each Sub-council will be presided over by the President or a member of the Supreme Council for National Security appointed by the President.

The scope of authority and responsibility of the Sub-councils will be determined by law and their organizational structure will be approved by the Supreme Council for National Defence

The decisions of the Supreme Council for National Security shall be effective after the confirmation by the Leader

#### CHAPTER XIV

#### THE REVISION OF THE CONSTITUTION

177. The revision of the Constitution of the Islamic Republic of Iran, whenever needed by the circumstances, will be done in the following manner

The Leader issues an edict to the President after consultation with the Nation's Exigency Council stipulating the amendments or additions to be made by the Council for Revision of the Constitution which consists of

- 1 Members of the Guardian Council
- 2 Heads of the three branches of the Government
- 3 Permanent members of the Nation's Exigency Council
- 4 Five members from among the Assembly of Experts
- 5 Ten representatives selected by the Leader
- 6 Three representatives from the Council of Ministers
- 7 Three representatives from the judiciary branch
- 8 Ten representatives from among the members of the Islamic Consultative Assembly
- 9 Three representatives from among the university professors

The method of working, manner of selection and the terms and conditions of the Council shall be determined by law

The decisions of the Council, after the confirmation and signatures of the Leader, shall be valid if approved by an absolute majority vote in a national referendum

The provisions of Article 59 of the Constitution shall not apply to the referendum for the "Revision of the Constitution "

The contents of the Articles of the Constitution related to the Islamic character of the political system, the basis of all the rules and regulations according to Islamic criteria, the religious footing, the objectives of the Islamic Republic of Iran, the democratic character of the Government, the wilayat al-'imr the Imamate of Ummah, and the administration of the affairs of the country based on national referenda, official religion of Iran [Islam] and the school [Twelver Ja'fari] are unalterable

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# 18

## CONSTITUTION OF REPUBLIC OF IRAQ

{Adopted in 1990}

### INTERIM CONSTITUTION

#### CHAPTER I THE REPUBLIC OF IRAQ

##### 1. State Form

Iraq is a Sovereign People's Democratic Republic. Its basic objective is the realization of one Arab State and the build-up of the socialist system.

##### 2. Authority

The people are the source of authority and its legitimacy.

##### 3. Sovereignty, Territory

(a) The sovereignty of Iraq is an indivisible entity.

(b) The territory of Iraq is an indivisible entity of which no part can be ceded.

##### 4. State Religion

Islam is the religion of the State.

##### 5. Nationalities

(a) Iraq is a part of the Arab Nation.

(b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism.

(c) This Constitution acknowledges the national rights of the Kurdish People and the legitimate rights of all minorities within the Iraqi unity

#### **6. Iraqi Nationality**

The Iraqi nationality is regulated by the law

#### **7. Languages**

(a) Arabic is the official language.

(b) The Kurdish language is official, besides Arabic, in the Kurdish Region

#### **8. Capital, Decentralization**

(a) Baghdad is the Capital of the Iraqi Republic, and it can be transferred by law

(b) The Iraqi Republic is divided into administrative units and is organized on the basis of decentralization

#### **9. Flag, Emblem**

The flag of the Iraqi Republic, its emblem, and stipulations concerning the two, are regulated by law

## **CHAPTER II SOCIAL AND ECONOMIC FOUNDATIONS OF THE IRAQI REPUBLIC**

#### **10. Social Solidarity**

The social solidarity is the first foundation for the society. Its essence is that every citizen accomplishes his duty in full, and that the society guarantees the citizen's rights and liberties in full

#### **11. Family, Mothers, Children**

The family is the nucleus of the society. The State secures its protection and support, and ensures maternal and child care

#### **12. Economy, Arab Unity**

The State assumes the responsibility for planning, directing and steering the national economy for the purpose of

(a) Establishing the socialist system on scientific and revolutionary foundations

(b) Realizing the economic Arab unity

#### **13. Public Property and Planning**

National resources and basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy

**14. Cooperation**

The State secures, encourages, and supports all types of cooperation in production, distribution, and consumption

**15. Public Property**

Public ownership and properties of the public sector are inviolable. The State and all people are responsible for safeguarding, securing, and protecting it. Any sabotage to it or aggression against it, is considered as sabotage and aggression against the entity of the society.

**16. Ownership, Private Property**

(a) Ownership is a social function, to be exercised within the objectives of the society and the plans of the State, according to stipulations of the law.

(b) Private ownership and economic individual liberty are guaranteed according to the law, and on the basis of not exercising them in a manner incompatible with the economic and general planning.

(c) Private property is not expropriated except for considerations of public interest and for just compensation in accordance with the law.

(d) The maximum limit of agricultural property is prescribed by the law, the surplus is owned by the people.

**17. Inheritance**

Inheritance is a guaranteed right, regulated by the law.

**18. Foreigners' Property**

Immobile ownership is prohibited for non-Iraqi, except otherwise mentioned by a law.

**CHAPTER III****FUNDAMENTAL RIGHTS AND DUTIES****19. Equality**

(a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.

(b) Equal opportunities are guaranteed to all citizens, according to the law.

**20. Criminal Trial**

(a) An accused is presumed to be innocent, until proved guilty at a legal trial.

(b) The right of defense is sacred, in all stages of proceedings and prosecution.

(c) Courts sessions are public, unless it becomes secret by a court's decision.

**21. Penalty, Punishment**

(a) Penalty is personal.

(b) There can be no crime, nor punishment, except in conformity with the law. No penalty shall be imposed, except for acts punishable by the law, while they are committed. A severer penalty than that prescribed by the law, when the act was committed, cannot be inflicted.

## **22. Dignity, Personal Integrity, Arrest, Home**

(a) The dignity of man is safeguarded. It is inadmissible to cause any physical or psychological harm.

(b) It is inadmissible to arrest a person, to stop him, to imprison him or to search him, except in accordance with the rules of the law.

(c) Homes have their sanctity. It is inadmissible to enter or search them, except in accordance with the rules of the law.

## **23. Communication**

The secrecy of means of communications by mail, telegrams, and telephones is guaranteed. It is inadmissible to disclose it, except for considerations of justice and security, in accordance with the rules prescribed by the law.

## **24. Right to Move**

It is inadmissible to prevent the citizen from the departure from the country or returning to it, nor to restrict his moves or residence in the country, except in cases laid down by the law.

## **25. Religion**

Freedom of religion, faith, and the exercise of religious rites, is guaranteed, in accordance with the rules of constitution and laws and in compliance with morals and public order.

## **26. Expression, Association**

The Constitution guarantees freedom of opinion, publication, meeting, demonstrations and formation of political parties, syndicates, and societies in accordance with the objectives of the Constitution and within the limits of the law. The State ensures the considerations necessary to exercise these liberties, which comply with the revolutionary, national, and progressive trend.

## **27. Education**

(a) The State undertakes the struggle against illiteracy and guarantees the right of education, free of charge, in its primary, secondary, and university stages, for all citizens.

(b) The State strives to make the primary education compulsory, to expand vocational and technical education in cities and rural areas, and to encourage particularly night education which enables the popular masses to combine science and work.

(c) The State guarantees the freedom of scientific research, encourages and rewards excellence and initiative in all mental, scientific, and artistic activities and all aspects of popular excellence.

**28. Educational Goals**

Education has the objective of raising and developing the general educational level, promoting scientific thinking, animating the research spirit, responding to exigencies of economic and social evolution and development programs, creating a national, liberal and progressive generation, strong physically and morally, proud of his people, his homeland and heritage, aware of all his national rights, and who struggles against the capitalistic ideology, exploitation, reaction, zionism, and imperialism for the purpose of realizing the Arab unity, liberty, and socialism

**29. Progress**

The State undertakes to make available, the means of enjoying the achievements of modernization, by the popular masses and to generalize the progressive accomplishments of contemporary civilization on all citizens

**30. Public Office**

(a) Public office is a sacred confidence and a social service, its essence is the honest and conscious obligation to the interests of the masses, their rights and liberties, in accordance with the rules of the constitution and the laws

(b) Equality in the appointment for public offices is guaranteed by the law

**31. Armed Forces**

(a) The defense of the homeland is a sacred duty and honor for the citizens, conscription is compulsory and regulated by the law

(b) Armed Forces belong to the people and are entrusted with ensuring his security, defending his independence, protecting the safety and the integrity of the people and territory, and realizing his national and regional objectives and aspirations

(c) The State alone establishes the Armed Forces. No other organization or group, is entitled to establish military or para-military formations

**32. Right, Honor, and Duty to Work**

(a) Work is a right, which is ensured to be available for every able citizen

(b) Work is an honour and a sacred duty for every able citizen, and is indispensable by the necessity to participate in building the society, protecting it, and realizing its evolution and prosperity

(c) The State undertakes to improve the conditions of work, and raise the standard of living, experience, and culture for all working citizens

(d) The State undertakes to provide the largest scale of social securities for all citizens, in cases of sickness, disability, unemployment, or aging

(e) The State undertakes to elaborate the plan to secure the means necessary, to enable the working citizens to pass their vacations in an atmosphere, which enables them to improve their health standard, and to promote their cultural and artistic talents

**33. Health**

The State assumes the responsibility to safeguard the public health by continually expanding free medical services, in protection, treatment, and medicine, within the scope of cities and rural areas

**34. Right to Asylum**

(a) The Iraqi Republic grants the right of political asylum for all militants, persecuted in their countries because of defending the liberal and human principles which are assumed by the Iraqi People in this Constitution

(b) The extradition of political refugees is prohibited

**35. Taxes**

Payment of taxes is the duty of every citizen. Taxes cannot be imposed, nor modified, nor levied, except by a law

**36. Prohibited Activity**

It is prohibited to exercise any activity against the objectives of the people, stipulated in this Constitution. Every act or behavior, having for purpose to crumble the national unity of the popular masses or to provoke racial, sectarian, or regional discrimination among them, or to be hostile to their gains and progressive achievements.

**CHAPTER IV****INSTITUTIONS OF THE IRAQI REPUBLIC****Section I—The Revolutionary Command Council****37. Supreme Institution**

The Revolutionary Command Council is the supreme institution in the State, which on 17 July 1968, assumed the responsibility to realize the public will of the people, by removing the authority from the reactionary, individual, and corruptive regime, and returning it to the people

**38. Competencies**

The Revolutionary Command Council exercises the following competencies by a two-third majority of its members

(a) Electing a President from its members, called President of the Revolutionary Council, who is President of the Republic

(b) Electing a Vice-President from its members, called Vice-President of the Revolutionary Command Council, who replaces the President, as qualified in the preceding paragraph, in case of his official absence or in case of the impossibility of exercising his constitutional competencies or any legitimate reason

(c) Selecting new members for the Council, from members of the Regional Leadership of the Socialist Arab Ba'ath Party, not to exceed twelve members

(d) Taking a decision concerning the resignation of the President, and Vice-President or any of the Council's members

(e) Relieving any member of the Council's membership

(f) Accusing and prosecuting members of the Revolutionary Command Council, Vice-Presidents, and Ministers

### 39. Oath

The President of the Revolutionary Command Council, the Vice-President and the members take the following oath before the Council

"I swear by God Almighty, by my honour and by my faith to preserve the Republican system, to commit myself to its Constitution and laws, to look after the independence of the country, its security and territorial integrity and to do my best earnestly and sincerely to realize the objectives of the Arab Nation for Unity, Freedom and Socialism "

### 40. Immunity

The President of the Revolutionary Command Council, the Vice-President, and the members enjoy full immunity No measures can be taken against any of them without a priori permission of the Council

### 41. Meetings, Debates, Laws and Decisions of Revolutionary Command Council

(a) The President, the Vice-President, or one-third of the members can call a meeting of the Revolutionary Command Council Meetings held are presided by the President or the Vice-President and are attended by the majority of the members

(b) Meetings and debates of the Revolutionary Command Council are closed Disclosing it, invokes constitutional responsibility before the Council Decisions of the Council are declared, published and communicated by the means specified in this Constitution

(c) Laws and decisions are ratified in the Council by the majority of its members, except otherwise stipulated by the Constitution

### 42. General Competencies

The Revolutionary Command Council exercises the following competencies

(a) Issuing laws and decrees having the force of the law

(b) Issuing decisions indispensable for applying the rules of the enacted laws

### 43. Majority Competencies

The Revolutionary Command Council excises the following competencies by the majority its members

(a) Ratifying matters of the Ministry of Defense and Public Security, elaborating the laws and taking the decisions in whatever concerns them from the point of view of organization and competencies

(b) Declaring the public mobilization totally or partially, declaring the war, accepting the truce, and concluding the peace

(c) Ratifying the draft general budget of the State, independent and investment budgets annexed to it, and ratifying final accounts

(d) Ratifying treaties and international agreements

(e) Elaborating its internal rules of procedure, determining its competencies, ratifying its budget, appointing its officials, determining rewards and remunerations of the President, the Vice-President, its members and officials

(f) Elaborating the rules regarding the prosecution of its members, concerning the formation of the court and the procedures to be followed in it

(g) Vesting its President or the Vice-President with some of his competencies prescribed in this Constitution, except legislative competencies

#### 44. Presidential Competencies

The President of the Revolutionary Command Council undertakes

(a) Presiding over the meetings of the Council, representing it, controlling its sessions, and issuing orders for expenditure

(b) Signing all laws and decisions issued by the Council and publishing them in the Official Gazette

(c) Supervising the activities of Ministries and organizations in the State, calling Ministers to discuss matters concerning their Ministries and questioning them in case of necessity, and notifying the Revolutionary Command Council regarding that

#### 45. Responsibility

The President of the Revolutionary Command Council, the Vice-President, and its members, each is responsible before the Council, for violating the Constitution or for breaking the constituencies of the constitutional oath, or for any action or behavior, considered by the Council as disgracing the honor of the responsibility which he assumes

### Section II—The National Council

#### 46. Composition

The National Council is composed of the People's representatives from various political, economic, and social sectors. Its formation, membership, work procedures, and its jurisdiction are determined by a special law, called the National Council Law

#### 47. Sessions

The National Council must be held in two ordinary sessions every year. The President can call it for an extraordinary meeting in case of necessity, and the meeting is restricted to matters which necessitated calling the meeting. Sessions of the National Council are held and dismissed by a decision of the Revolutionary Command Council

**48. Publicity**

The meetings of the Council are public, unless it is decided that some are to be held closed according to rules specified in its law

**49. Indemnity**

(a) Members of the National Council are not censured for opinions or suggestions expressed by them in the performance of their task

(b) No member of the Council can be pursued or arrested for a crime committed during a meeting session without permission of the Council, except in the case of flagrante delicto

**50. Organization**

The National Council undertakes.

(a) *Elaborating its internal statute, determining its competencies, deciding its budget, and appointing its employees* Rewards and remunerations of its President and members are determined by a law

(b) *Elaborating rules for accusing and prosecuting its members, in case of committing one of the actions stipulated in Article 55 of this Constitution*

**51. Command Council Bills**

(1) The National Council considers the draft laws proposed by the Revolutionary Command Council within fifteen days from the date of their delivery to the office of the Presidency of the National Council. If the Council approves the draft, it is sent to the President of the Republic, to be promulgated, but if it is rejected or modified by the National Council, it is returned to the Revolutionary Command Council. If this latter approves the modification, it sends the draft to the President of the Republic, to be promulgated

(2) If the Revolutionary Command Council insists upon its point of view, in the second reading, it is returned to the National Council, to be reviewed in a common meeting between the two Councils, the decision taken by a two-thirds majority is considered final

**52. Presidential Bills**

The National Council considers within fifteen days the draft laws presented to it by the President of the Republic

(1) If the Council rejects the draft, it is returned to the President of the Republic with the reasons which justified the rejection

(2) If the Council approves the draft, it is sent to the Revolutionary Command Council and becomes issuable after that Council approves it

(3) If the National Council modifies the draft, it is sent to the Revolutionary Command Council and becomes issuable if that Council approves it

(4) But if the Revolutionary Command Council opposes to modifying the draft, or if it makes another modification, it is once again returned to the National Council within a week

(5) If the National Council approves the point of view of the evolutionary Command Council, it sends the draft to the President of the Republic for promulgating it

(6) But if the National Council insists, in the second reading, upon its point of view, a common meeting of the two Councils is held and the draft issued by two-thirds majority is considered definite and is sent to the President of the Republic to be promulgated

### 53. National Council Bills

The National Council considers the draft law presented by a quarter of its members, in other than military, financial matters, and public security affairs

(1) If the Council approves the draft law, it is sent to the Revolutionary Command Council to be considered within fifteen days from its delivery to the Council's Office.

(2) If the Revolutionary Command Council approves it, the draft is sent to the President of the Republic to be promulgated

(3) If the Revolutionary Command Council rejects the draft, it is returned to the National Council.

(4) If the Revolutionary Command Council modifies the draft, it is returned to the National Council

(5) If this latter insists upon its point of view, in the second reading, a common meeting for the two Councils is held, presided over by the President of the Revolutionary Command Council or the Vice-President. The draft issued by two-thirds majority is considered definite and is sent to the President of the Republic to be promulgated

### 54. Debate

(a) Vice-Presidents of the Republic, Ministers, and those at their rank, have the right to attend the meetings of the National Council and to participate in its debates

(b) The National Council, with a permission of the President of the Republic, has the right to call Ministers for the purpose of clarification or investigation

### 55. Responsibility

The President of the National Council and every member of it, is responsible before the Council for violating the Constitution or for breaking the constituencies of the constitutional oath or for any action or behavior, considered by the National Council as disgracing the honor of the responsibility which he assumes

## Section III—President of the Republic

### 56. Head of State, Supreme Command

(a) The President of the Republic is the Head of the State and the Supreme Commander of the Armed Forces, and he exercises the Executive

Authority directly or by the assistance of his Deputies and Ministers, according to the rules of the Constitution

(b) The President of the Republic issues the decrees necessary for exercising his competencies stipulated in this Constitution

### 57. Competencies

The President of the Republic exercises the following competencies

(a) Preserving the independence of the Country, its territorial integrity, safeguarding its internal and external security, and protecting the rights and liberties of all citizens

(b) Declaring the state of total and partial emergency and ending it according to the law.

(c) Appointing the Vice-Presidents of the Republic and relieving them of their posts

(d) Appointing the Governors, the Judges, and all civil and military State employees, promoting them, terminating their services, placing them on disponsibility, and granting badges of honour and military grades, according to the law

(e) Elaborating the draft general State budget, the independent and investment budgets annexed to it, and ratifying the final accounts of these budgets and referring them to the National Council to discuss them

(f) Preparing the general plan of the State in all economic and social affairs, elaborated by competent Ministries and referring it to the National Council

(g) Contracting and granting loans, supervising the organization and administration of money and credit

(h) Supervising all the public utilities, official and quasi-official organizations and public sector organizations

(i) Directing and controlling the work of Ministries and public organizations and coordinating them

(j) Conducting negotiations and concluding agreements and international treaties

(k) Accepting the diplomatic and international representatives in Iraq and demanding their withdrawal

(l) Appointing and accrediting the Iraqi diplomatic representatives in Arab and foreign Capitals and in international conferences and organizations

(m) Issuing special amnesty and ratifying judgements of capital punishment

(n) Supervising the good enforcement of the Constitution, the laws, decisions, judicial judgements, and developmental plans in all parts of the Iraqi Republic

(o) Conferring some of his constitutional competencies to one or more of his deputies

**58. Control**

Vice-Presidents of the Republic and Ministers are responsible for their functions before the President of the Republic. He has the right to bring any of them to trial according to the rules of Constitution, for functional errors committed by him, for exploiting the authority, or for misusing it.

**59. Oath**

Vice-President of the Republic and Ministers take the following oath before the President of the Republic, before assuming the responsibilities of their functions:

"I swear by God Almighty, by my honor and by my faith to preserve the Republican system, to commit myself to its Constitution and laws, to look after the independence of the Country, its security and territorial integrity, and to do my best earnestly and sincerely to realize the objectives of the People."

**Section IV—The Judiciary****60. Independence, Recourse**

(a) The judiciary is independent and is subject to no other authority save that of the law.

(b) The right of litigation is ensured to all citizens.

(c) The law determines the way of court formation, their levels, jurisdiction, and conditions for the appointment, transfer, promotion, litigation, and dismissal of Judges and Magistrates.

**61. Prosecution**

The law determines the posts of public prosecution, its agencies and conditions for the appointment of the attorneys general, their deputies, rules of their transfer, promotion, litigation, and dismissal.

**CHAPTER V****GENERAL PROVISIONS****62. Revolutionary Command Council Office**

(a) To be member of the Revolutionary Command Council or Vice-President of the Republic or Minister, a person must be Iraqi by birth, born of two Iraqi parents, by birth also.

(b) It is inadmissible for Members of the Revolutionary Command Council and Vice-Presidents of the Republic and Ministers, during their term of office, to pursue any private professional or commercial work or to buy any State property or to sell or exchange with the State any of their own properties.

**63. Permanent Constitution**

(a) The rules of this Constitution are enforced till the Permanent Constitution is promulgated.

(b) This Constitution cannot be modified except by the Revolutionary Command Council and by a two-thirds majority of its members

#### **64. Publication of Laws**

(a) Laws are published in the Official Gazette and are put into force, effective the date of publication, unless otherwise stipulated

(b) Laws have no retroactive effect, unless otherwise stipulated This exception does not include penal laws, tax laws, and fiscal fees

#### **65. In the Name of The People**

This Interim Constitution and all laws and judiciary judgements are promulgated and put into force, in the name of the people

#### **66. Continuity of Laws**

All laws and decisions of the Revolutionary Command Council, enacted prior to the promulgation of this Constitution, remain in force and cannot be modified or abolished except in accordance with the procedures prescribed in this Constitution

#### **67. Promulgation, Publication**

The President of the Revolutionary Command Council undertakes promulgating this Constitution and publishing it in the Official Gazette

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# 19

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## CONSTITUTION OF IRELAND

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{Adopted on 1 July 1937}

### **PREAMBLE**

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,

We, the people of Ireland, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ,

Who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,

And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,

Do hereby adopt, enact, and give to ourselves this Constitution

### *CHAPTER I* **THE NATION**

#### **1. Sovereign Rights**

The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions

## 2. Territory

The national territory consists of the whole island of Ireland, its islands and the territorial seas

## 3. Extent of Application of Laws

Pending the re-integration of the national territory, and without prejudice to the right of Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Ireland and the like extra-territorial effect

# CHAPTER II

## THE STATE

## 4. Name of the State

The name of the State is Ireland

## 5. State Principles

Ireland is a sovereign, independent, democratic State

## 6. Popular Sovereignty, Rule of Law

(1) All powers of Government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good

(2) These powers of Government are exercisable only by or on the authority of the organs of State established by this Constitution

## 7. Flag

The national flag is the tricolor of green, white and orange

## 8. Language

(1) The Irish language as the national language is the first official language

(2) The English language is recognized as a second official language

(3) Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof

## 9. Citizenship

(1) On the coming into operation of this Constitution any person who was a citizen of Ireland immediately before the coming into operation of this Constitution shall become and be a citizen of Ireland

(2) The future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law

(3) No person may be excluded from Irish nationality and citizenship by reason of the sex of such person

(2) Fidelity to the nation and loyalty to the State are fundamental political duties of all citizens

#### 10. Natural Resources

(1) All natural resources, including the air and all forms of potential energy, within the jurisdiction of Parliament and Government established by this Constitution and all royalties and franchises within that jurisdiction belong to the State subject to all estates and interests therein for the time being lawfully vested in any person or body

(2) All land and all mines, minerals and waters which belonged to Ireland immediately before the coming into operation of this Constitution belong to the State to the same extent as they then belonged to Ireland

(3) Provision may be made by law for the management of the property which belongs to the State by virtue of this Article and for the control of the alienation, whether temporary or permanent, of that property

(4) Provision may also be made by law for the management of land, mines, minerals and waters acquired by the State after the coming into operation of this Constitution and for the control of the alienation, whether temporary or permanent, of the land, mines, minerals and waters so acquired

#### 11. Fund

All revenues of the State from whatever source arising shall, subject to such exception as may be provided by law, form one fund, and shall be appropriated for the purposes and in the manner and subject to the charges and liabilities determined and imposed by law

### CHAPTER III

#### THE PRESIDENT

#### 12. Election

(1) There shall be a President of Ireland, hereinafter called the President, who shall take precedence over all other persons in the State and who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law

(2.1) The President shall be elected by direct vote of the people

(2.2) Every citizen who has the right to vote at an election for members of the House of Representatives shall have the right to vote at an election for President

(2.3) The voting shall be by secret ballot and on the system of proportional representation by means of the single transferable vote

(3.1) The President shall hold office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies, or resigns, or is removed from office, or becomes permanently

incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges

(3 2) A person who holds, or who has held, office as President, shall be eligible for re-election to that office once, but only once

(3 3) An election for the office of President shall be held not later than, and not earlier than the sixtieth day before, the date of the expiration of the term of office of every President, but in the event of the removal from office of the President or of his death, resignation, or permanent incapacity established as aforesaid (whether occurring before or after he enters upon his office), an election for the office of President shall be held within sixty days after such event

(4 1) Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President

(4 2) Every candidate for election, not a former or retiring President, must be nominated either by

(i) not less than twenty persons, each of whom is at the time a member of one of the Houses of Parliament or

(ii) by the Councils of not less than four administrative Counties (including County Boroughs) as defined by law

(4 3) No person and no such Council shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election

(4 4) Former or retiring Presidents may become candidates on their own nomination

(4 5) Where only one candidate is nominated for the office of President it shall not be necessary to proceed to a ballot for his election

(5) Subject to the provisions of this Article, elections for the office of President shall be regulated by law

(6 1) The President shall not be a member of either House of Parliament

(6 2) If a member of either House of Parliament be elected President, he shall be deemed to have vacated his seat in that House

(6 3) The President shall not hold any other office or position of emolument

(7) The first President shall enter upon his office as soon as may be after his election, and every subsequent President shall enter upon his office on the day following the expiration of the term of office of his predecessor or as soon as may be thereafter or, in the event of his predecessor's removal from office, death, resignation, or permanent incapacity established as provided by section (3), as soon as may be after the election

(8) The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of Parliament, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration

"In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold

its laws, that I will fulfill my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland May God direct and sustain me "

(9) The President shall not leave the State during his term of office save with the consent of the Government

(10 1) The President may be impeached for stated misbehavior.

(10 2) The charge shall be preferred by either of the Houses of Parliament, subject to and in accordance with the provisions of this section

(10 3) A proposal to either House of Parliament to prefer a charge against the President under this section shall not be entertained unless upon a notice of motion in writing signed by not less than thirty members of that House

(10 4) No such proposal shall be adopted by either of the Houses of Parliament save upon a resolution of that House supported by not less than two-thirds of the total membership thereof

(10 5) When a charge has been preferred by either House of Parliament, the other House shall investigate the charge, or cause the charge to be investigated

(10 6) The President shall have the right to appear and to be represented at the investigation of the charge

(10 7) If, as a result of the investigation, a resolution be passed supported by not less than two-thirds of the total membership of the House of Parliament by which the charge was investigated, or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehavior, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall operate to remove the President from his office

(11 1) The President shall have an official residence in or near the City of Dublin

(11 2) The President shall receive such emoluments and allowances as may be determined by law

(11 3) The emoluments and allowances of the President shall not be diminished during his term of office

### 13. Functions

(1 1) The President shall, on the nomination of the House of Representatives, appoint the Prime Minister

(1 2) The President shall, on the nomination of the Prime Minister with the previous approval of the House of Representatives, appoint the other members of the Government

(1 3) The President shall, on the advice of the Prime Minister, accept the resignation or terminate the appointment of any member of the Government

(2 1) the House of Representatives shall be summoned and dissolved by the President on the advice of the Prime Minister

(2 2) The President may in his absolute discretion refuse to dissolve the House of Representatives on the advice of a Prime Minister who has ceased to retain the support of a majority in the House of Representatives

(2 3) The President may at any time, after consultation with the Council of State, convene a meeting of either or both of the Houses of Parliament

(3 1) Every Bill passed or deemed to have been passed by both Houses of Parliament shall require the signature of the President for its enactment into law

(3 2) The President shall promulgate every law made by Parliament

(4) The supreme command of the Defense Forces is hereby vested in the President

(5 1) The exercise of the supreme command of the Defense Forces shall be regulated by law

(5 2) All commissioned officers of the Defense Forces shall hold their commissions from the President

(6) The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities

(7 1) The President may, after consultation with the Council of State, communicate with the Houses of Parliament by message or address on any matter of national or public importance

(7 2) The President may, after consultation with the Council of State, address a message to the Nation at any time on any such matter

(7 3) Every such message or address must, however, have received the approval of the Government

(8 1) The President shall not be answerable to either House of Parliament or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions

(8 2) The behavior of the President may, however, be brought under review in either of the Houses of Parliament for the purposes of Article 12 (10), or by any court, tribunal or body appointed or designated by either of the Houses of Parliament for the investigation of a charge under Article 12 (10)

(9) The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body

(10) Subject to this Constitution, additional powers and functions may be conferred on the President by law

(11) No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.

#### 14. Absence of the President

(1) In the event of the absence of the President, or his temporary incapacity, or his permanent incapacity established as provided by Article 12

(3) hereof, or in the event of his death, resignation, removal from office, or failure to exercise and perform the powers and functions of his office or any of them, or at any time at which the office of President may be vacant, the powers and functions conferred on the President by or under this Constitution shall be exercised and performed by a Commission constituted as provided in section (2) of this Article.

(2 1) The Commission shall consist of the following persons, namely, the Chief Justice, the Chairman of the House of Representatives, and the Chairman of the Senate

(2 2) The President of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the Chief Justice is unable to act

(2 3) The Deputy Chairman of the House of Representatives shall act as a member of the Commission in the place of the Chairman of the House of Representatives on any occasion on which the office of Chairman of the House of Representatives is vacant or on which the said Chairman is unable to act.

(2 4) The Deputy Chairman of the Senate shall act as a member of the Commission in the place of the Chairman of the Senate on any occasion on which the office of Chairman of the Senate is vacant or on which the said Chairman is unable to act

(3) The Commission may act by any two of their number and may act notwithstanding a vacancy in their membership

(4) The Council of State may by a majority of its members make such provision as to them may seem meet for the exercise and performance of the powers and functions conferred on the President by or under this Constitution in any contingency which is not provided for by the foregoing provisions of this

(5 1) The provisions of this Constitution which relate to the exercise and performance by the President of the powers and functions conferred on him by or under this Constitution shall subject to the subsequent provisions of this section apply to the exercise and performance of the said powers and functions under this article

(5 2) In the event of the failure of the President to exercise or perform any power or function which the President is by or under this Constitution required to exercise or perform within a specified time, the said power or function shall be exercised or performed under this article, as soon as may be after the expiration of the time so specified.

## CHAPTER IV

## THE NATIONAL PARLIAMENT

## Part 1—Constitution and Powers

## 15. Constitution, Functions

(1 1) The National Parliament shall be called and known, and is in this Constitution generally referred to, as Parliament

(1.2) Parliament shall consist of the President and two Houses, viz the House of Representatives and a Senate.

(1 3) The Houses of Parliament shall sit in or near the City of Dublin or in such other place as they may from time to time determine

(2.1) The sole and exclusive power of making laws for the State is hereby vested in Parliament no other legislative authority has power to make laws for the State

(2 2) Provision may however be made by law for the creation or recognition of subordinate legislatures and for the powers and functions of these legislatures

(3 1) Parliament may provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people.

(3 2) A law establishing or recognizing any such council shall determine its rights, powers and duties, and its relation to Parliament and to the Government

(4 1) Parliament shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof

(4 2) Every law enacted by Parliament which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid

(5) Parliament shall not declare acts to be infringements of the law which were not so at the date of their commission

(6 1) The right to raise and maintain military or armed forces is vested exclusively in Parliament

(6 2) No military or armed force, other than a military or armed force raised and maintained by Parliament, shall be raised or maintained for any purpose whatsoever

(7) Parliament shall hold at least one session every year

(8 1) Sitings of each House of Parliament shall be public

(8 2) In cases of special emergency, however, either House may hold a private sitting with the assent of two-thirds of the members present

(9 1) Each House of Parliament shall elect from its members its own Chairman and Deputy Chairman, and shall prescribe their powers and duties

(9 2) The remuneration of the Chairman and Deputy Chairman of each House shall be determined by law

(10) Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties

(11 1) All questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member

(11 2) The Chairman or presiding member shall have and exercise a casting vote in the case of an equality of votes

(11 3) The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its standing orders

(12) All official reports and publications of Parliament or of either House thereof and utterances made in either House wherever published shall be privileged.

(13) The members of each House of Parliament shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself

(14) No person may be at the same time a member of both Houses of Parliament, and, if any person who is already a member of either House becomes a member of the other House, he shall forthwith be deemed to have vacated his first seat

(15) Parliament may make provision by law for the payment of allowances to the members of each House thereof in respect of their duties as public representatives and for the grant to them of free traveling and such other facilities (if any) in connection with those duties as Parliament may determine

## 16. Eligibility

(1 1) Every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for membership of the House of Representatives

(1 2)(i) All citizens, and

(ii) such other persons in the State as may be determined by law, without distinction of sex who have reached the age of eighteen years who are not disqualified by law and comply with the provisions of the law relating to the election of members of the House of Representatives, shall have the right to vote at an election for members of the House of Representatives

(1 3) No law shall be enacted placing any citizen under disability or incapacity for membership of the House of Representatives on the ground of sex or disqualifying any citizen or other person from voting at an election for members of the House of Representatives on that ground

(1 4) No voter may exercise more than one vote at an election for the House of Representatives, and the voting shall be by secret ballot

(2 1) The House of Representatives shall be composed of members who represent constituencies determined by law

(2 2) The number of members shall from time to time be fixed by law, but the total number of members of the House of Representatives shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population

(2 3) The ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as it is practicable, be the same throughout the country

(2 4) Parliament shall revise the constituencies at least once in every twelve years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of the House of Representatives sitting when such revision is made

(2 5) The members shall be elected on the system of proportional representation by means of the single transferable vote

(2 6) No law shall be enacted whereby the number of members to be returned for any constituency shall be less than three

(3 1) The House of Representatives shall be summoned and dissolved as provided by Article 13 (2)

(3 2) A general election for members of the House of Representatives shall take place not later than thirty days after a dissolution of the House of Representatives.

(4 1) Polling at every general election for the House of Representatives shall as far as practicable take place on the same day throughout the country

(4 2) The House of Representatives shall meet within thirty days from that polling day

(5) The House of Representatives shall not continue for a longer period than seven years from the date of its first meeting a shorter period may be fixed by law

(6) Provision shall be made by law to enable the member of the House of Representatives who is the Chairman immediately before a dissolution of the House of Representatives to be deemed without any actual election to be elected a member of the House of Representatives at the ensuing general election

(7) Subject to the foregoing provisions of this Article, elections for membership of the House of Representatives, including the filling of casual vacancies, shall be regulated in accordance with law

**17. Financial Estimates**

(1 1) As soon as possible after the presentation to the House of Representatives under Article 28 of the Estimates of Receipts and the Estimates of Expenditure of the State for any financial year, the House of Representatives shall consider such Estimates

(1 2) Save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the Financial Resolutions of each year shall be enacted within that year.

(2) the House of Representatives shall not pass any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to the House of Representatives by a message from the Government signed by the Prime Minister

**18. Senate**

(1) The Senate shall be composed of sixty members, of whom eleven shall be nominated members and forty-nine shall be elected members

(2) A person to be eligible for membership of the Senate must be eligible to become a member of the House of Representatives

(3) The nominated members of the Senate shall be nominated, with their prior consent, by the Prime Minister who is appointed next after the reassembly of the House of Representatives following the dissolution thereof which occasions the nomination of the said members

(4 1) The elected members of the Senate shall be elected as follows

(i) Three shall be elected by the National University of Ireland

(ii) Three shall be elected by the University of Dublin

(iii) Forty-three shall be elected from panels of candidates constituted as hereinafter provided

(4 2) Provision may be made by law for the election, on a franchise and in the manner to be provided by law, by one or more of the following institutions, namely

(i) the universities mentioned in section (4 1),

(ii) any other institutions of higher education in the State, of so many members of the Senate as may be fixed by law in substitution for an equal number of the members to be elected pursuant to paragraphs (i) and (ii) of the said sub-section

A member or members of the Senate may be elected under this sub-section by institutions grouped together or by a single institution

(4 3) Nothing in this Article shall be invoked to prohibit the dissolution by law of a university mentioned in Section (4 1)

(5) Every election of the elected members of the Senate shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot

(6) The members of the Senate to be elected by the Universities shall be elected on a franchise and in the manner to be provided by law

(7 1) Before each general election of the members of the Senate to be elected from panels of candidates, five panels of candidates shall be formed in the manner provided by law containing respectively the names of persons having knowledge and practical experience of the following interests and services, namely

(i) National Language and Culture, Literature, Art, Education and such professional interests as may be defined by law for the purpose of this panel,

(ii) Agriculture and allied interests and Fisheries,

(iii) Labour, whether organized or unorganized,

(iv) Industry and Commerce, including banking, finance, accountancy, engineering and architecture,

(v) Public Administration and social services, including voluntary social activities

(7 2) Not more than eleven and, subject to the provisions of Article 19 hereof, not less than five members of the Senate shall be elected from any one panel

(8) A general election for the Senate shall take place not later than ninety days after a dissolution of the House of Representatives, and the first meeting of the Senate after the general election shall take place on a day to be fixed by the President on the advice of the Prime Minister

(9) Every member of the Senate shall, unless he previously dies, resigns, or becomes disqualified, continue to hold office until the day before the polling day of the general election for the Senate next held after his election or nomination

(10 1) Subject to the foregoing provisions of this Article elections of the elected members of the Senate shall be regulated by law

(10 2) Casual vacancies in the number of the nominated members of the Senate shall be filled by nomination by the Prime Minister with the prior consent of persons so nominated

(10 3) Casual vacancies in the number of the elected members of the Senate shall be filled in the manner provided by law

### 19. Direct Election

Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of the Senate as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18

## Part 2—Legislation

### 20. Amendment by Senate

(1) Every Bill initiated in and passed by the House of Representatives shall be sent to the Senate and may, unless it be a Money Bill, be amended in the Senate and the House of Representatives shall consider any such amendment

(2 1) A Bill other than a Money Bill may be initiated in the Senate, and if passed by the Senate, shall be introduced in the House of Representatives

(2 2) A Bill initiated in the Senate if amended in the House of Representatives shall be considered as a Bill initiated in the House of Representatives

(3) A Bill passed by either House and accepted by the other House shall be deemed to have been passed by both Houses

## Part 3—Money Bills

### 2.1 Initiative, Procedure

(1 1) Money Bills shall be initiated in the House of Representatives only.

(1 2) Every Money Bill passed by the House of Representatives shall be sent to the Senate for its recommendations

(2 1) Every Money Bill sent to the Senate for its recommendations shall, at the expiration of a period not longer than twenty-one days after it shall have been sent to the Senate, be returned to the House of Representatives, which may accept or reject all or any of the recommendations of the Senate

(2 2) If such Money Bill is not returned by the Senate to the House of Representatives within such twenty-one days or is returned within such twenty-one days with recommendations which the House of Representatives does not accept, it shall be deemed to have been passed by both Houses at the expiration of the said twenty-one days

### 22. Definition of Money Bills

(1 1) A Money Bill means a Bill which contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation, the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges, supply, the appropriation, receipt, custody, issue or audit of accounts of public money, the raising or guarantee of any loan or the repayment thereof, matters subordinate and incidental to these matters or any of them

(1 2) In this definition the expressions "taxation", "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes

(2 1) The Chairman of the House of Representatives shall certify any Bill which in his opinion, is a Money Bill to be a Money Bill, and his certificate

shall, subject to the subsequent provisions of this section, be final and conclusive

(2 2) The Senate, by a resolution passed at a sitting at which not less than thirty members are present, may request the President to refer the question whether the Bill is or is not a Money Bill to a Committee of Privileges

(2 3) If the President after consultation with the Council of State decides to accede to the request he shall appoint a Committee of Privilege consisting of an equal number of members of the House of Representatives and of the Senate and a Chairman who shall be a Judge of the Supreme Court these appointments shall be made after consultation with the Council of State in the case of an equality of votes but not otherwise the Chairman shall be entitled to vote

(2 4) The President shall refer the question to the Committee of Privileges so appointed and the Committee shall report its decision thereon to the President within twenty-one days after the day on which the Bill was sent to the Senate

(2 5) The decision of the Committee shall be final and conclusive

(2 6) If the President after consultation with the Council of State decides not to accede to the request of the Senate, or if the Committee of Privileges fails to report within the time hereinbefore specified the certificate of the Chairman of the House of Representatives shall stand confirmed

### Part 4—Time for Consideration of Bills

#### 23. Timing

(1) This Article applies to every Bill passed by the House of Representatives and sent to the Senate other than a Money Bill or a Bill the time for the consideration of which by the Senate shall have been abridged under Article 24

(1 1) Whenever a Bill to which this Article applies is within the stated period defined in the next following subsection either rejected by the Senate or passed by the Senate with amendments to which the House of Representatives does not agree or is neither passed (with or without amendment) nor rejected by the Senate within the stated period, the Bill shall, if the House of Representatives so resolves within one hundred and eighty days after the expiration of the stated period be deemed to have been passed by both Houses of Parliament on the day on which the resolution is passed

(1 2) The stated period is the period of ninety days commencing on the day on which the Bill is first sent by the House of Representatives to the Senate or any longer period agreed upon in respect of the Bill by both Houses of Parliament

(2.1) The preceding section of this Article shall apply to a Bill which is initiated in and passed by the Senate, amended by the House of Representatives, and accordingly deemed to have been initiated in the House of Representatives

(2) For the purpose of this application the stated period shall in relation to such a Bill commence on the day on which the Bill is first sent to the Senate after having been amended by the House of Representatives

#### 24. Certification, Urgency

(1) If and whenever on the passage by the House of Representatives of any Bill, other than a Bill expressed to be a Bill containing a proposal to amend the Constitution, the Prime Minister certifies by messages in writing addressed to the President and to the Chairman of each House of Parliament that, in the opinion of the Government, the Bill is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international, the time for the consideration of such Bill by the Senate shall, if the House of Representatives so resolves and if the President, after consultation with the Council of State, concurs, be abridged to such period as shall be specified in the resolution

(2) Where a Bill, the time for the consideration of which by the Senate has been abridged under this,

(a) is, in the case of a Bill which is not a Money Bill, rejected by the Senate or passed by the Senate with amendments to which the House of Representatives does not agree or neither passed nor rejected by the Senate, or

(b) is, in the case of a Money Bill, either returned by the Senate to the House of Representatives with recommendations which the House of Representatives does not accept or is not returned by the Senate to the House of Representatives, within the period specified in the resolution, the Bill shall be deemed to have been passed by both Houses of Parliament at the expiration of that period

(3) When a Bill the time for the consideration of which by the Senate has been abridged under this becomes law it shall remain in force for a period of ninety days from the date of its enactment and no longer unless, before the expiration of that period, both Houses shall have agreed that such law shall remain in force for a longer period and the longer period so agreed upon shall have been specified in resolutions passed by both Houses

### Part 5—Signing and Promulgation of Laws

#### 25. Promulgation

(1) As soon as any Bill, other than a Bill expressed to be a Bill containing a proposal for the amendment of this Constitution, shall have been passed or deemed to have been passed by both Houses of Parliament, the Prime Minister shall present it to the President for his signature and for promulgation by him as a law in accordance with the provisions of this Article

(2) Save as otherwise provided by this Constitution, every Bill so presented to the President for his signature and for promulgation by him as a law shall be signed by the President not earlier than the fifth and not later than

the seventh day after the date on which the Bill shall have been presented to him

(2) At the request of the Government, with the prior concurrence of the Senate, the President may sign any Bill the subject of such request on a date which is earlier than the fifth day after such date as aforesaid

(3) Every Bill the time for the consideration of which by the Senate shall have been abridged under 24 shall be signed by the President on the day on which such Bill is presented to him for signature and promulgation as a law

(4) Every Bill shall become and be law as on and from the day on which it is signed by the President under this Constitution, and shall, unless the contrary intention appears, come into operation on that day

(4) Every Bill signed by the President under this Constitution shall be promulgated by him as a law by the publication by his direction of a notice in the Government Gazette stating that the Bill has become law

(4) Every Bill shall be signed by the President in the text in which it was passed or deemed to have been passed by both Houses of Parliament, and if a Bill is so passed or deemed to have been passed in both the official languages, the President shall sign the text of the Bill in each of those languages

(4) Where the President signs the text of a Bill in one only of the official languages, an official translation shall be issued in the other official language

(4) As soon as may be after the signature and promulgation of a Bill as a law, the text of such law which was signed by the President or, where the President has signed the text of such law in each of the official languages, both the signed texts shall be enrolled for record in the office of the Registrar of the Supreme Court, and the text, or both the texts, so enrolled shall be conclusive evidence of the provisions of such law

(4) In case of conflict between the texts of a law enrolled under this section in both the official languages, the text in the national language shall prevail

(5) It shall be lawful for the Prime Minister, from time to time as occasion appears to him to require, to cause to be prepared under his supervision a text (in both the official languages) of this Constitution as then in force embodying all amendments theretofore made therein

(5) A copy of every text so prepared, when authenticated by the signatures of the Prime Minister and the Chief Justice, shall be signed by the President and shall be enrolled for record in the office of the Registrar of the Supreme Court

(5) The copy so signed and enrolled which is for the time being the latest text so prepared shall, upon such enrolment, be conclusive evidence of this Constitution as at the date of such enrolment and shall for that purpose supersede all texts of this Constitution of which copies were previously so enrolled

(5 4) In case of conflict between the texts of any copy of this Constitution enrolled under this section, the text in the national language shall prevail

## **Part 6 —Reference of Bills to the Supreme Court**

### **26. Review**

(0) This Article applies to any Bill passed or deemed to have been passed by both Houses of Parliament other than a Money Bill, or a Bill expressed to be a Bill containing a proposal to amend the Constitution, or a Bill the time for the consideration of which by the Senate shall have been abridged under Article 24

(1 1) The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof

(1 2) Every such reference shall be made not later than the seventh day after the date on which such Bill have been presented by the Prime Minister to the President for his signature

(1 3) The President shall not sign any Bill the subject of a reference to the Supreme Court under this pending the pronouncement of the decision of the Court

(2 1) The Supreme Court consisting of not less than five Judges shall consider every question referred to it by the President under this Article for a decision, and, having heard arguments by or on behalf of the Attorney General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference

(2 2) The decision of the majority of the Judges of the Supreme Court shall, for the purposes of this, be the decision of the Court and shall be pronounced by such one of those Judges as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed

(3.1) In every case in which the Supreme Court decides that any provision of a Bill the subject of a reference to the Supreme Court under this article is repugnant to this Constitution or to any provision thereof, the President shall decline to sign such Bill

(3 2) If, in the case of a Bill to which Article 27 applies, a petition has been addressed to the President under that Article, that Article shall be complied with

(3 3) In every other case the President shall sign the Bill as soon as may be after the date on which the decision of the Supreme Court shall have been pronounced

## Part 7—Reference of Bills to the People

### 27. Request of Veto

(0) This Article applies to any Bill, other than a Bill expressed to be a Bill containing a proposal for the amendment of this Constitution, which shall have been deemed, by virtue of Article 23 hereof, to have been passed by both Houses of Parliament

(1) A majority of the members of the Senate and not less than one-third of the members of the House of Representatives may by a joint petition addressed to the President by them under this Article request the President to decline to sign and promulgate as a law any Bill to which this Article applies on the ground that the Bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained

(2) Every such petition shall be in writing and shall be signed by the petitioners whose signatures shall be verified in the manner prescribed by law

(3) Every such petition shall contain a statement of the particular ground or grounds on which the request is based, and shall be presented to the President not later than four days after the date on which the Bill shall have been deemed to have been passed by both Houses of Parliament

(4 1) Upon receipt of a petition addressed to him under this Article, the President shall forthwith consider such petition and shall, after consultation with the Council of State, pronounce his decision thereon not later than ten days after the date on which the Bill to which such petition relates shall have been deemed to have been passed by both Houses of Parliament

(4 2) If the Bill or any provision thereof is or has been referred to the Supreme Court under Article 26, it shall not be obligatory on the President to consider the petition unless or until the Supreme Court has pronounced a decision on such reference to the effect that the said Bill or the said provision thereof is not repugnant to this Constitution or to any provision thereof, and, if a decision to that effect is pronounced by the Supreme Court, it shall not be obligatory on the President to pronounce his decision on the petition before the expiration of six days after the day on which the decision of the Supreme Court to the effect aforesaid is pronounced

(5 1) In every case in which the President decides that a Bill the subject of a petition under this Article contains a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Prime Minister and the Chairman of each House of Parliament accordingly in writing under his hand and Seal and shall decline to sign and promulgate such Bill as a law unless and until the proposal shall have been approved either

(i) by the people at a Referendum in accordance with the provisions of Article 47 (2) within a period of eighteen months from the date of the President's decision, or

(ii) by a resolution of the House of Representatives passed within the said period after a dissolution and reassembly of the House of Representatives

(5 2) Whenever a proposal contained in a Bill the subject of a petition under this article shall have been approved either by the people or by a resolution of the House of Representatives in accordance with the foregoing provisions of this section, such Bill shall as soon as may be after such approval be presented to the President for his signature and promulgation by him as a law and the President shall thereupon sign the Bill and duly promulgate it as a law

(6) In every case in which the President decides that a Bill the subject of a petition under this article does not contain a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Prime Minister and the Chairman of each House of Parliament accordingly in writing under his hand and Seal, and such Bill shall be signed by the President not later than eleven days after the date on which the Bill shall have been deemed to have been passed by both Houses of Parliament and shall be duly promulgated by him as a law

## CHAPTER V THE GOVERNMENT

### 28. Constitution, Functions

(1) The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution

(2) The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government

(3 1) War shall not be declared and the State shall not participate in any war save with the assent of the House of Representatives

(3 2) In the case of actual invasion, however, the Government may take whatever steps they may consider necessary for the protection of the State, and the House of Representatives if not sitting shall be summoned to meet at the earliest practicable date

(3 3) Nothing in this Constitution shall be invoked to invalidate any law enacted by Parliament which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this sub-section "time of war" includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of Parliament shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and "time of war or armed rebellion" includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of Parliament shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist

(4 1) The Government shall be responsible to the House of Representatives

(4 2) The Government shall meet and act collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government

(4 3) The Government shall prepare Estimates of the Receipts and Estimates of the Expenditure of the State for each financial year, and shall present them to the House of Representatives for consideration

(5 1) The head of the Government shall be called, and is in this Constitution referred to, as the Prime Minister

(5 2) The Prime Minister shall keep the President generally informed on matters of domestic and international policy

(6 1) The Prime Minister shall nominate a member of the Government to be the Vice-Prime Minister

(6 2) The Vice-Prime Minister shall act for all purposes in the place of the Prime Minister if the Prime Minister should die, or become permanently incapacitated, until a new Prime Minister shall have been appointed

(6 3) The Vice-Prime Minister shall also act for or in the place of the Prime Minister during the temporary absence of the Prime Minister

(7 1) The Prime Minister, the Vice-Prime Minister and the member of the Government who is in charge of the Department of Finance must be members of the House of Representatives

(7 2) The other members of the Government must be members of the House of Representatives or the Senate, but not more than two may be members of the Senate

(8) Every member of the Government shall have the right to attend and be heard in each House of Parliament

(9 1) The Prime Minister may resign from office at any time by placing his resignation in the hands of the President

(9 2) Any other member of the Government may resign from office by placing his resignation in the hands of the Prime Minister for submission to the President

(9 3) The President shall accept the resignation of a member of the Government, other than the Prime Minister, if so advised by the Prime Minister

(9 4) The Prime Minister may at any time, for reasons which to him seem sufficient, request a member of the Government to resign, should the member concerned fail to comply with the request, his appointment shall be terminated by the President if the Prime Minister so advises

(10) The Prime Minister shall resign from office upon his ceasing to retain the support of a majority in the House of Representatives unless on his advice the President dissolves the House of Representatives and on the reassembly of the House of Representatives after the dissolution the Prime Minister secures the support of a majority in the House of Representatives

(11 1) If the Prime Minister at any time resigns from office the other members of the Government shall be deemed also to have resigned from office, but the Prime Minister and the other members of the Government shall continue to carry on their duties until their successors shall have been appointed

(11 2) The members of the Government in office at the date of a dissolution of the House of Representatives shall continue to hold office until their successors shall have been appointed

(12) The following matters shall be regulated in accordance with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the Government to be the Ministers in charge of the said Departments, the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity, and the remuneration of the members of the Government

## CHAPTER VI INTERNATIONAL RELATIONS

### 29. Peace, Principles of International Law

(1) Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality

(2) Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination

(3) Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other States

(4 1) The executive power of the State in or in connection with its external relations shall in accordance with Article 28 be exercised by or on the authority of the Government

(4 2) For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern

(4 3) The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on March 25, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on March 25, 1957) The State may ratify the Single European Act (signed on behalf of the Member States of the Communities at Luxembourg on the 17th day of February, 1986, and at the Hague on February 28, 1986) {Amendment 1992, not yet verified The State may ratify the Treaty on European Union signed at Maastricht on the 7th day of February 1992 and may become a member of that Union } No provision of

this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership {Amendment 1992 not yet verified of the European Communities or} of the Communities or prevents laws enacted, acts done or measures adopted {Amendment 1992, not yet verified of the European Union or} by the Communities, or institutions thereof, {Amendment 1992, not yet verified or by bodies competent under the Treaties establishing the Communities,} from having the force of law in the State {Amendment 1992, not yet verified The State may ratify the Agreement relating to Community Patents drawn up between the Member States of the Communities and done at Luxembourg on the 15th day of December, 1989 }

(5 1) Every international agreement to which the State becomes a party shall be laid before the House of Representatives

(5 2) The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by the House of Representatives

(5 3) This section shall not apply to agreements or conventions of a technical and administrative character.

(6) No international agreement shall be part of the domestic law of the State save as may be determined by Parliament

## CHAPTER VII THE ATTORNEY GENERAL

### 30. Functions, Appointment

(1) There shall be an Attorney General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law

(2) The Attorney General shall be appointed by the President on the nomination of the Prime Minister

(3) All crimes and offenses prosecuted in any court constituted under Article 34 other than a court of summary jurisdiction shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorized in accordance with law to act for that purpose

(4) The Attorney General shall not be a member of the Government.

(5.1) The Attorney General may at any time resign from office by placing his resignation in the hands of the Prime Minister for submission to the President

(5.2) The Prime Minister may, for reasons which to him seem sufficient request the resignation of the Attorney General

(5 3) In the event of failure to comply with the request, the appointment of the Attorney General shall be terminated by the President if the Prime Minister so advises

(5 4) The Attorney General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until the successor to the Prime Minister shall have been appointed

(6) Subject to the foregoing provisions of this Article, the office of Attorney General, including the remuneration to be paid to the holder of the office, shall be regulated by law

## *CHAPTER VIII*

### **THE COUNCIL OF STATE**

#### **31. Functions, Constitution**

(1) There shall be a Council of State to aid and counsel the President on all matters on which the President may consult the said Council in relation to the exercise and performance by him of such of his powers and functions as are by this Constitution expressed to be exercisable and performable after consultation with the Council of State, and to exercise such other functions as are conferred on the said Council by this Constitution

(2) The Council of State shall consist of the following members

(i) As ex-officio members the Prime Minister, the Vice-Prime Minister, the Chief Justice, the President of the High Court, the Chairman of the House of Representatives, the Chairman of the Senate, and the Attorney General

(ii) Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Prime Minister, or the office of Chief Justice, or the office of President of the Executive Council of Ireland

(iii) Such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State

(3) The President may at any time and from time to time by warrant under his hand and Seal appoint such other persons as, in his absolute discretion, he may think fit, to be members of the Council of State, but not more than seven persons so appointed shall be members of the Council of State at the same time

(4) Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form

"In the presence of Almighty God I, , do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfill my duties as a member of the Council of State "

(5) Every member of the Council of State appointed by the President, unless he previously dies, resigns, becomes permanently incapacitated, or is removed from office, shall hold office until the successor of the President by whom he was appointed shall have entered upon his office.

(6) Any member of the Council of State appointed by the President may resign from office by placing his resignation in the hands of the President

(7) The President may, for reasons which to him seem sufficient, by an order under his hand and Seal, terminate the appointment of any member of the Council of State appointed by him

(8) Meetings of the Council of State may be convened by the President at such times and places as he shall determine

### 32. Consultation

The President shall not exercise or perform any of the powers or functions which are by this Constitution expressed to be exercisable or performable by him after consultation with the Council of State unless, and on every occasion before so doing, he shall have convened a meeting of the Council of State and the members present at such meeting shall have been heard by him

## CHAPTER IX

### THE COMPTROLLER AND AUDITOR GENERAL

#### 33. Functions, Appointment

(1) There shall be a Comptroller and Auditor General to control on behalf of the State all disbursements and to audit all accounts of moneys administered by or under the authority of Parliament

(2) The Comptroller and Auditor General shall be appointed by the President on the nomination of the House of Representatives

(3) The Comptroller and Auditor General shall not be a member of either House of Parliament and shall not hold any other office or position of emolument

(4) The Comptroller and Auditor General shall report to the House of Representatives at stated periods as determined by law

(5 1) The Comptroller and Auditor General shall not be removed from office except for stated misbehavior or incapacity, and then only upon resolutions passed by the House of Representatives and by the Senate calling for his removal

(5 2) The Prime Minister shall duly notify the President of any such resolutions as aforesaid passed by the House of Representatives and by the Senate and shall send him a copy of each such resolution certified by the Chairman of the House of Parliament by which it shall have been passed

(5 3) Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove the Comptroller and Auditor General from office

(6) Subject to the foregoing, the terms and conditions of the office of Comptroller and Auditor General shall be determined by law

## CHAPTER X THE COURTS

### 34. Publicity

(1) Justice shall be administered in courts established by law by Judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public

(2) The courts shall comprise courts of first instance and a court of final appeal

(3 1) The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal

(3 2) Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any court established under this or any other Article of this Constitution other than the High Court or the Supreme Court

(3 3) No court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26

(3 4) The courts of first instance shall also include courts of local and limited jurisdiction with a right of appeal as determined by law

(4 1) The court of final appeal shall be called the Supreme Court

(4 2) The president of the Supreme Court shall be called the Chief Justice

(4 3) The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.

(4 4) No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution

(4 5) The decision of the Supreme Court on a question as to the validity of a law having regard to the provisions of this Constitution shall be pronounced by such one of the Judges of that Court as that Court shall direct, and no other opinion on such question, whether assenting or dissenting, shall be pronounced, nor shall the existence of any such other opinion be disclosed

(4 6) The decision of the Supreme Court shall in all cases be final and conclusive

(5 1) Every person appointed a Judge under this Constitution shall make and subscribe the following declaration

"In the presence of Almighty God I, do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws May God direct and sustain me "

(5 2) This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other Judges of the Supreme Court, the Judges of the High Court and the Judges of every other court in the presence of the Chief Justice or the senior available Judge of the Supreme Court in open court

(5 3) The declaration shall be made and subscribed by every Judge before entering upon his duties as such Judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President

(5 4) Any Judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office

### 35. Judges by Appointment

(1) The Judges of the Supreme Court, the High Court and all other courts established in pursuance of 34 hereof shall be appointed by the President

(2) All Judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law

(3) No Judge shall be eligible to be a member of either House of Parliament or to hold any other office or position of emolument

(4 1) A Judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehavior or incapacity, and then only upon resolutions passed by the House of Representatives and by the Senate calling for his removal

(4 2) The Prime Minister shall duly notify the President of any such resolutions passed by the House of Representatives and by the Senate, and shall send him a copy of every such resolution certified by the Chairman of the House of Parliament by which it shall have been passed

(4 3) Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove from office the Judge to whom they relate

(5) The remuneration of a Judge shall not be reduced during his continuance in office

**36. Organization by Law**

Subject to the foregoing provisions of this Constitution relating to the courts, the following matters shall be regulated in accordance with law, that is to say

- (i) the number of Judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such Judges,
- (ii) the number of the Judges of all other courts, and their terms of appointment, and
- (iii) the constitution and organization of the said courts, the distribution of jurisdiction and business among the said courts and Judges, and all matters of procedure

**37. No Invalidation**

(1) Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorized by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a Judge or a court appointed or established as such under this Constitution

(2) No adoption of a person taking effect or expressed to take effect at any time after the coming into operation of this Constitution under laws enacted by Parliament and being an adoption pursuant to an order made or an authorization given by any person or body of persons designated by those laws to exercise such functions and powers was or shall be invalid by reason only of the fact that such person or body of persons was not a Judge or a court appointed or established as such under this Constitution

## *CHAPTER XI*

### **TRIAL OF OFFENSES**

**38. Due Process**

(1) No person shall be tried on any criminal charge save in due course of law

(2) Minor offenses may be tried by courts of summary jurisdiction

(3) (1) Special courts may be established by law for the trial of offenses in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective the effective administration of justice, and the preservation of public peace and order

(3) (2) The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law

(4) (1) Military tribunals may be established for the trial of offenses against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion

(4) (2) A member of the Defence Forces not on active service shall not be tried by any court martial or other military tribunal for an offence cognisable

by the civil courts unless such offence is within the jurisdiction of any court martial or other military tribunal under any law for the enforcement of military discipline

(5) Save in the case of the trial of offenses under section (2), (3) or (4) no person shall be tried on any criminal charge without a jury

(6) The provisions of Articles 34 and 35 shall not apply to any court or tribunal set up under section (3) or (4) of this Article

### 39. Treason

Treason shall consist only in levying war against the State, or assisting any State or person or inciting or conspiring with any person to levy war against the State, or attempting by force of arms or other violent means to overthrow the organs of Government established by this Constitution, or taking part or being concerned in or inciting or conspiring with any person to make or to take part or be concerned in any such attempt

## CHAPTER XII FUNDAMENTAL RIGHTS

### 40. Personal Rights

(1) All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function

(2) (1) Titles of nobility shall not be conferred by the State

(2) (2) No title of nobility or of honor may be accepted by any citizen except with the prior approval of the Government

(3) (1) The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

(3) (2) The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen

(3) (3) The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right {Amendment 1992, not yet verified. This sub-section shall not limit freedom to travel between the State and another State. This sub-section shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state }

(4) (1) No citizen shall be deprived of his personal liberty save in accordance with law

(4) (2) Upon complaint being made by or on behalf of any person to the High Court or any Judge thereof alleging that such person is being unlawfully

detained, the High Court and any and every Judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law

(4 3) Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it

(4 4) The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior Judge of that Court who is available so directs in respect of any particular case, consist of three Judges and shall, in every other case, consist of one Judge only

(4 5) Where an order is made under this section by the High Court or a Judge thereof for the production of the body of a person who is under sentence of death, the High Court or such Judge thereof shall further order that the execution of the said sentence of death shall be deferred until after the body of such person has been produced before the High Court and the lawfulness of his detention has been determined and if, after such deferment, the detention of such person is determined to be lawful, the High Court shall appoint a day for the execution of the said sentence of death and that sentence shall have effect with the substitution of the day so appointed for the day originally fixed for the execution thereof

(4 6) Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion

(5) The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law

(6 1) The State guarantees liberty for the exercise of the following rights, subject to public order and morality

(i) The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavor to

ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

(ii) The right of the citizens to assemble peaceably and without arms. Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of Parliament.

(iii) The right of the citizens to form associations and unions. Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

(6.2) Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

#### 41. Family

(1.1) The State recognizes the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

(1.2) The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

(2.1) In particular, the State recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

(2.2) The State shall, therefore, endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

(3.1) The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.

(3.2) No law shall be enacted providing for the grant of a dissolution of marriage. {Amendment 1995, new version, not yet verified. A court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that—

(i) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,

(ii) there is no reasonable prospect of a reconciliation between the spouses,

(iii) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and

(iv) any further conditions prescribed by law are complied with }

(3) No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved

#### 42. Education

(1) The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children

(2) Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State

(3) (1) The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State

(3) (2) The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social

(4) The State shall provide for free primary education and shall endeavor to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation

(5) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavor to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child

#### 43. Private Property

(1) (1) The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods

(1) (2) The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property

(2) (1) The State recognizes, however, that the exercise of the rights mentioned in the foregoing provisions of this article ought, in civil society, to be regulated by the principles of social justice.

(2) (2) The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good

**44. Religion**

(1) The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honor religion.

(2) 1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

(2) 2) The State guarantees not to endow any religion.

(2) 3) The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

(2) 4) Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

(2) 5) Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

(2) 6) The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

**CHAPTER XIII****DIRECTIVE PRINCIPLES OF SOCIAL POLICY****45. Social Policy**

(0) The principles of social policy set forth in this Article are intended for the general guidance of Parliament. The application of those principles in the making of laws shall be the care of Parliament exclusively, and shall not be cognisable by any court under any of the provisions of this Constitution.

(1) The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.

(2) The State shall, in particular, direct its policy towards securing

(i) That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

(ii) That the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to serve the common good.

(iii) That, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment.

(iv) That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

(v) That there may be established on the land in economic security as many families as in the circumstances shall be practicable.

(3 1) The State shall favour and, where necessary, supplement private initiative in industry and commerce

(3 2) The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation

(4 1) The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged

(4 2) The State shall endeavor to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength

#### CHAPTER XIV

### AMENDMENT OF THE CONSTITUTION

#### 46. Amendment

(1) Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal, in the manner provided by this article

(2) Every proposal for an amendment of this Constitution shall be initiated in the House of Representatives as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of Parliament, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum

(3) Every such Bill shall be expressed to be "An Act to amend the Constitution"

(4) A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal

(5) A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of Article 47 (1) and shall be duly promulgated by the President as a law

#### CHAPTER XV

### THE REFERENDUM

#### 47. Referendum

(1) Every proposal for an amendment of this Constitution which is submitted by referendum to the decision of the people shall, for the purpose of Article 46, be held to have been approved by the people, if, upon having been so submitted, a majority of the votes cast at such referendum shall have been cast in favor of its enactment into law

(2 1) Every proposal, other than a proposal to amend the Constitution, which is submitted by referendum to the decision of the people shall be held to have been vetoed by the people if a majority of the votes cast at such referendum shall have been cast against its enactment into law and if the votes so cast against its enactment into law shall have amounted to not less than thirty-three and one-third per cent of the voters on the register

(2 2) Every proposal, other than a proposal to amend the Constitution, which is submitted by referendum to the decision of the people shall for the purposes of Article 27 hereof be held to have been approved by the people unless vetoed by them in accordance with the provisions of the foregoing subsection of this section

(3) Every citizen who has the right to vote at an election for members of the House of Representatives shall have the right to vote at a referendum

(4) Subject as aforesaid, the referendum shall be regulated by law

## CHAPTER XVI REPEAL OF CONSTITUTION

### 48. Repeal of Old Constitution

The Constitution of Ireland in force immediately prior to the date of the coming into operation of this Constitution and the Constitution of the Irish Free State (Ireland) Act 1922, in so far as that Act or any provision thereof is then in force shall be and are hereby repealed as on and from that date

### 49. Repeal of Powers

(1) All powers, functions, rights and prerogatives whatsoever exercisable in or in respect of Ireland immediately before the 11th day of December, 1936, whether in virtue of the Constitution then in force or otherwise, by the authority in which the executive power of Ireland was then vested are hereby declared to belong to the people

(2) It is hereby enacted that, save to the extent to which provision is made by this Constitution or may hereafter be made by law for the exercise of any such power, function, right or prerogative by any of the organs established by this Constitution, the said powers, functions, rights and prerogatives shall not be exercised or be capable of being exercised in or in respect of the State save only by or on the authority of the Government

(3) The Government shall be the successors of the Government of Ireland as regards all property, assets, rights and liabilities

### 50. Continuation of Old Laws

(1) Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in Ireland immediately prior to the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of Parliament

(2) Laws enacted before, but expressed to come into force after, the coming into operation of this Constitution, shall, unless otherwise enacted by Parliament, come into force in accordance with the terms thereof

# 20

## CONSTITUTION OF REPUBLIC OF ITALY

{Adopted on 22 Dec 1947}

{Effective since 1 Jan 1948}

### *PART 0* BASIC PRINCIPLES

#### 1 Form of State

(1) Italy is a democratic Republic founded on labour

(2) Sovereignty belongs to the people who exercise it in the manner and within the limits laid down by this Constitution

#### 2. Human Rights

The Republic recognizes and guarantees the inviolable rights of man, both as an individual and as a member of the social groups in which his personality finds expression, and it imposes the performance of unalterable political, economic, and social duties

#### 3. Freedom, Equality

(1) All citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions, and personal or social conditions

(2) It is the responsibility of the Republic to remove all economic and social obstacles which, by limiting the freedom and equality of citizens, prevent the full development of the individual and the participation of all workers in the political, economic, and social organization of the country

#### 4. Work

(1) The Republic recognizes the right of all citizens to work and promotes such conditions as will make this right effective

(2) Every citizen shall undertake, according to his possibilities and his own choice, an activity or a function contributing to the material and moral progress of society

#### 5. Local Autonomy

The Republic, which is one and indivisible, recognizes and promotes local autonomy, it applies the fullest measure of administrative decentralization in services dependent on the State and adjusts the principles and methods of its legislation to the requirements of autonomy and decentralization

#### 6. Minorities

The Republic safeguards linguistic minorities by means of special provisions

#### 7. State and Church

(1) The State and the Catholic Church are, each within its own ambit, independent and sovereign

(2) Their relations are regulated by the Lateran Pacts. Such amendments to these Pacts as are accepted by both parties do not require any procedure of Constitutional revision

#### 8. Religion

(1) All religious denominations are equally free before the law

(2) Religious denominations other than Catholic are entitled to organize themselves according to their own creed provided that they are not in conflict with Italian juridical organization

(3) Their relations with the State are regulated by law on the basis of agreements with their respective representatives

#### 9. Research and Culture

(1) The Republic promotes the development of scholarship and scientific and technical research

(2) It safeguards the natural beauties and the historical and artistic wealth of Italy

#### 10. International Law

(1) Italy's legal system conforms with the generally recognized principles of international law

(2) The legal status of foreigners is regulated by law in conformity with international rules and treaties

(3) A foreigner to whom the practical exercise in his own country of democratic freedoms, guaranteed by the Italian Constitution is precluded, is entitled to the right of asylum within the territory of the Republic, under conditions laid down by law

(4) The extradition of a foreigner for political offenses is not admitted

#### 11. Condemnation of War

Italy condemns war as an instrument of aggression against the liberties of other peoples and as a means for settling international controversies, it agrees, on conditions of equality with other States, to such limitation of sovereignty as may be necessary for a system calculated to ensure peace and justice between Nations, it promotes and encourages international organizations having such ends in view

#### 12 Flag

The flag of the Republic is the Italian Tricolor green, white, and red, in three vertical bands of equal dimensions

### PART I

## RIGHTS AND DUTIES OF PRIVATE CITIZENS

### Title I—Civil Relations

#### 13. Personal Freedom

(1) Personal liberty is inviolable

(2) No form of personal detention, inspection, or search is permitted, nor other restrictions on personal liberty save by order of the judicial authority for which the motive must be stated, and then only in such cases and manner as the law provides

(3) In exceptional cases of necessity and urgency, strictly defined by law, the police authorities may carry out provisional measures, which must be communicated within 48 hours to the judicial authorities and which, if the latter do not ratify them within the next 48 hours, are thereby revoked and declared null and void

(4) All acts of physical and moral violence on persons subjected to limitations of freedom are punished

(5) The law lays down the maximum period of preventive detention.

#### 14 Home

(1) Personal domicile is inviolable

(2) Inspection, search, and distraint may not be carried out save in cases and in the manner laid down by law in conformity with guarantees prescribed for safeguarding personal freedom

(3) Special laws regulate verifications and inspections for reasons of public health and safety, or for economic and fiscal purposes

#### 15 Correspondence

(1) The liberty and secrecy of correspondence and of every form of communication are inviolable

(2) Limitations upon them may only be enforced by decision, for which

motives must be given, of the judicial authorities with the guarantees laid down by law

#### **16. Right to Move**

(1) Every citizen has the right to reside and travel freely in any part of the metropolitan territory, save for such limitations as the laws may prescribe in a general way for reasons of health or security. No restrictions may be prescribed for political reasons.

(2) Every citizen is free to leave the territory of the Republic and re-enter it, save for such obligations as are laid down by law.

#### **17. Assembly**

(1) Citizens are entitled to hold meetings peaceably and unarmed.

(2) No previous notice is required for meetings in places to which the public has access.

(3) For meetings in public thoroughfares previous notice must be communicated to the authorities, who may forbid them only for well established reasons of security or public safety.

#### **18. Association**

(1) Citizens are entitled to form associations without authorization for reasons not forbidden to individuals by criminal law.

(2) Secret associations and those which pursue political aims, even indirectly, by means of organizations of a military character, are forbidden.

#### **19. Freedom of Religion**

All are entitled to freely profess their religious convictions in any form, individually or in associations, to propagate them, and to celebrate them in public or in private, save in the case of rites contrary to morality.

#### **20. Religious Institutions**

The religious character and the religious or confessional aims of an association or institution shall not involve special legal limitations or special fiscal burdens for its constitution, legal status, or any of its activities.

#### **21. Communication**

(1) All are entitled freely to express their thoughts by word of mouth, in writing, and by all other means of communication.

(2) The press may not be subjected to any authority or censorship.

(3) Distrust is allowed only by order of the judicial authorities, for which motives must be given, in the case of offenses definitely laid down by the press law, or in the case of violation of the provisions which the said law prescribes for identifying responsible parties.

(4) In such cases, under conditions of absolute urgency and when the immediate intervention of the judicial authorities is not possible, distrust may be applied to the periodical press by officers of the judicial police, who shall communicate the matter to the judicial authorities within 24 hours. If the said

judicial authorities do not ratify the measure within the next 24 hours, the distraint is withdrawn and is null and void

(5) The law may prescribe, by means of provisions of a general nature, that the financial sources of periodical publication be made known

(6) Printed publications, performances, and all other manifestations contrary to morality are forbidden

(7) The law lays down proper provisions for preventing and repressing all violations

## **22. Citizenship, Name**

No one may be deprived of his legal status, his citizenship, or his name for political reasons

## **23. Forced Labour**

No personal service or payment may be forced on anyone, save according to law.

## **24. Recourse to Courts**

(1) All are entitled to institute legal proceedings for the protection of their own rights and legitimate interests

(2) Defence is an inalienable right at every stage of legal proceedings

(3) The indigent are entitled, through special provisions, to proper means for action or defence at all levels of jurisdiction

(4) The law lays down the conditions and methods for obtaining reparation for judicial errors

## **25. Rule of Law**

(1) No one may avoid proceedings resulting from offenses against legislation in force

(2) No one may be punished save on the basis of a law which has come into force before the offence has been committed

(3) No one may be subjected to security measures save in such cases as are laid down by law

## **26. Extradition**

(1) The extradition of a citizen is permitted only in cases expressly provided for in international conventions

(2) Extradition shall never be permitted for political offenses

## **27. Rights of the Accused**

(1) Criminal responsibility is personal

(2) The person accused is not considered guilty until final sentence has been passed upon him

(3) Punishment must not consist of measures contrary to humane precepts and shall aim at reforming the person upon whom sentence is passed

(4) The death penalty is not admitted save in cases specified by military laws in time of war

## **28. Responsibility of Officials**

Officials and employees of the State and of public bodies are directly responsible, according to the criminal, civil, and administrative laws, for acts committed in violation of rights. In such cases, civil responsibility extends to the State and to public bodies

## **Title II—Ethical and Social Relations**

### **29. Marriage**

(1) The State recognizes the family as a natural association founded on marriage.

(2) Marriage is based on the moral and legal equality of husband and wife, within the limits laid down by the laws for ensuring family unity

### **30. Education**

(1) It is the duty and right of parents to support, instruct and educate their children, even those born out of wedlock

(2) The law states the way in which these duties shall be fulfilled should the parents prove incapable

(3) The law ensures full legal and social protection for children born out of wedlock consistent with the rights of the members of the legitimate family

(4) The law lays down rules and limitations for ascertaining paternity

### **31. Family**

(1) The Republic facilitates, by means of economic and other provisions, the formation of the family and the fulfillment of the tasks connected therewith, with particular consideration for large families

(2) It safeguards maternity, infancy, and youth, promoting and encouraging institutions necessary for such purposes

### **32. Health**

(1) The Republic provides health safeguards as a basic right of the individual and in the interests of the community, and grants medical assistance to the indigent free of charge

(2) No one may be forced to undergo any particular medical treatment, save under the provisions of the law. In no case shall the law violate the limits imposed by proper respect for the human person

### **33. Teaching, Examination**

(1) The freedom of art and science and freedom of instruction in them is affirmed .

(2) The Republic lays down general rules for education and establishes public schools of all kinds and grades. Organizations and private citizens are

entitled to found schools and educational institutions which do not involve charges on the State.

(3) The law, in laying down the rights and obligations of private schools which apply for official recognition, must ensure for them full liberty and for their pupils conditions equivalent to those of the public schools

(4) State examinations are prescribed for admission to the various types and grades of schools, or on the conclusion of educational courses, and for securing diplomas and certificates entitling candidates to exercise a profession or trade

(5) Institutions of higher learning, universities, and academies have the right to draft their own regulations within the limits laid down by State legislation

#### 34. Education

(1) Education is available to everyone

(2) Elementary education, imparted for at least eight years, is compulsory and free

(3) Capable and deserving pupils, even if without financial resources, are entitled to attain the highest grades of learning

(4) The Republic gives effect to this privilege by means of scholarships, of contributions to the families of the pupils, and other provisions, to be obtained by competitive examination

### Title III—Economic Relations

#### 35. Work

(1) The Republic safeguards labour in all its forms and methods of execution

(2) It provides for the professional or vocational training and advancement of workers

(3) It promotes and encourages international agreements, and organizations calculated to confirm and regulate the rights of labour.

(4) It admits freedom to emigrate, save for such limitations as are prescribed by law in the general interests, and for the protection of Italian labour abroad

#### 36. Wages

(1) An employed person is entitled to wages in proportion to the quantity and quality of his work, and in any case sufficient to provide him and his family with a free and dignified existence.

(2) The maximum number of hours of work per day is fixed by law.

(3) An employed person is entitled to a weekly day of rest and to annual holidays with pay, he cannot relinquish this right

**37. Equality in Work**

(1) Female labour enjoys equal rights and the same wages for the same work as male labour. Conditions of work must make it possible for them to fulfill their essential family duties and provide for the adequate protection of mothers and children.

(2) The law prescribes the minimum age for paid labour.

(3) The Republic prescribes special measures for safeguarding juvenile labour and guarantees equal pay for equal work.

**38. Welfare**

(1) Every private citizen unable to work and unprovided with the resources necessary for existence is entitled to private and social assistance.

(2) Workers are entitled to adequate insurance for their requirements in case of accident, illness, disability, old age, and involuntary unemployment.

(3) The disabled and persons incapable of employment are entitled to education and vocational training.

(4) The responsibilities laid down in this Article are entrusted to organs and institutions provided or assisted by the State.

(5) The freedom of private assistance is affirmed.

**39. Unions**

(1) Freedom in the organization of trade unions is affirmed.

(2) No compulsion may be imposed on trade unions except that of registering at local or central offices according to the provisions of the law.

(3) A condition of registration is that the statutes of the unions sanction an internal organization on a democratic basis.

(4) Registered trade unions have a legal status. They may, being represented in proportion to the number of their registered members, negotiate collective labour agreements having compulsory value for all persons belonging to the categories to which the said agreements refer.

**40. Strike**

The right to strike is exercised within the sphere of the laws concerning the subject.

**41. Business**

(1) Private economic enterprise is open to all.

(2) It cannot, however, be applied in such a manner as to be in conflict with social utility or when it is prejudicial to security, freedom, and human dignity.

(3) The law prescribes such planning and controls as may be advisable for directing and coordinating public and private economic activities towards social objectives.

**42. Property**

(1) Ownership is public or private. Economic commodities belong to the State, to public bodies, or to private persons.

(2) Private ownership is recognized and guaranteed by laws which prescribe the manner in which it may be acquired and enjoyed and its limitations, with the object of ensuring its social function and of rendering it accessible to all

(3) Private property, in such cases as are prescribed by law and with provisions for compensation, may be expropriated in the general interest

(4) The law lays down the rules and limitations of legitimate and testamentary inheritance and the rights of the State in relation to same

#### 43 Expropriation

For purposes of general utility the law may reserve in the first instance or transfer, by means of expropriation and payment of compensation, to the State, to public bodies, or to labour or consumer communities, certain undertakings or categories of undertakings operating essential public services, sources of power, or exercising monopolies and invested primarily with a character of general interest

#### 44. Land

(1) With the object of securing a rational utilization of the soil and of establishing equitable and rational social relations, the law imposes obligations on, and limitations to, private landed ownership, fixes limits to its extent which vary in the different parts of the country and according to diverse agricultural areas, encourages and imposes land reclamation, the transformation of large estates, and the institution of productive units, and assists small and medium sized holdings

(2) The law prescribes measures in favour of mountainous areas

#### 45. Cooperation

(1) The Republic recognizes the social function of cooperation on a basis of reciprocity and devoid of any private speculative aim. The law promotes and encourages such cooperation with suitable provisions and through proper controls ensures its character and objectives

(2) The law guarantees and provides for the development of artisan trades

#### 46. Participation

With a view to the economic and social progress of labour and in conformity with the requirements of production, the Republic recognizes the rights of workers to participate in management in the manner and within the limits prescribed by law

#### 47. Savings, Credits

(1) The Republic encourages and safeguards savings in all its aspects and supervises, coordinates and controls the issuing of credit

(2) It encourages the investment of private savings in the purchase of homes or holdings directly farmed by the owners and direct or indirect investment in large productive enterprise.

**Title IV—Political Relations****48. Electoral Rights**

(1) All private citizens, male or female, who are of age, are entitled to vote

(2) Votes are personal, equal, free, and secret To vote is a civic duty

(3) The right to vote may not be limited save on account civil incapacity or in consequence of an irrevocable penal sentence, or in cases of moral unworthiness established by law

**49. Political Parties**

All citizens have the right to freely form political parties in order to contribute by democratic means to national policy

**50. Petitions**

All citizens may submit petitions to Parliament demanding legislative measures or setting forth general needs

**51. Public Office**

(1) All citizens of either sex are eligible for public office and for elective positions on conditions of equality, according to the requisites established by law

(2) The law may place Italians who do not belong to the Republic on par with resident citizens in the matter of admission to public office and elective positions

(3) Any person called upon to occupy an elective office has the right to claim the time necessary for the fulfillment of such duties without being deprived of his employment

**52. Military Service**

(1) The defence of the country is a moral duty of every citizen

(2) Military service is compulsory, within the limits and in the manner laid down by law The fulfillment of military duty shall not prejudice the employment of the person concerned, nor the exercise of his political rights

(3) The organization of the Armed Forces is based on the democratic principles of the Republic

**53. Taxation**

(1) Everyone shall contribute to public expenditure in proportion to his resources

(2) Fiscal levies shall be on a progressive scale

**54. Binding Constitution, Oaths**

(1) All citizens have the duty of fealty to the Republic and shall respect the Constitution and the laws.

(2) Citizens to whom public functions are entrusted shall execute them in a disciplined and honourable manner swearing an oath to fulfill such conditions in those cases prescribed by law

**PART II**  
**ORGANIZATION OF THE REPUBLIC**

**Title I—Parliament**

**Section I—The Two Chambers**

**55. Parliament**

(1) Parliament consists of the Chamber of Deputies and the Senate of the Republic

(2) Parliament holds joint meetings of members of the Chamber of Deputies and the Senate only in cases laid down by the Constitution

**56. Chamber of Deputies**

(1) The Chamber of Deputies is elected by universal and direct suffrage, and is composed of six hundred and thirty Members

(2) All persons who have reached the age of twenty-five years on the day of the elections are eligible for membership

(3) Division of seats among the constituencies is obtained by dividing the number of inhabitants registered at the last census by six hundred and thirty and distributing the said seats in proportion to the population of each constituency, on the basis of the quotients and the highest figures below these quotients

**57. Senate**

(1) The Senate of the Republic is elected on a regional basis

(2) Senators number three hundred and fifteen. No region may have less than ten Senators but Molise is attributed two and Valle d'Aosta one. Division of seats among the Regions, on the basis of the terms set out above, is made according to the proportion of the population of the Regions at the last census, with quotients and the highest figures below these quotients

**58. Senate Elections**

(1) Senators are elected by direct universal suffrage by voters over twenty-five years of age

(2) Voters over forty years of age are eligible for election to the Senate

**59. Senators for Life**

(1) Any person who has held office as President of the Republic is by right a Senator for Life, unless he refuses to accept the nomination

(2) The President of the Republic may nominate, as Senators for Life, five citizens, who have brought honour to the Nation through their exceptional merits in social, scientific, artistic, and literary fields

**60. Term**

(1) The Chamber of Deputies and the Senate are elected for a period of five years

(2) The term of each Chamber may not be extended save by law and only in the event of war

#### **61. Elections**

(1) Election of the new Chambers must take place within seventy days of the dissolution of the preceding Parliament. The first sitting must be held not later than twenty days after the elections

(2) The powers of the preceding Chambers shall continue until the newly elected Parliament shall meet.

#### **62.**

(1) The Chambers shall meet on the first day of February and October which is not a holiday

(2) Each Chamber may be convened in extraordinary session on the initiative of its Speaker or of the President of the Republic or of one-third of its members

(3) When one Chamber is called upon to meet in extraordinary session, the other Chamber is also convened *ipso jure*

#### **63. Speaker**

(1) Each Chamber elects its Speaker and the members of the Speaker's Office from among its own members

(2) The Speaker of the Chamber of Deputies and members of the Speaker's Office shall preside whenever Parliament meets in joint session

#### **64. Rules of Procedures, Quorum, Government Participation**

(1) Each Chamber drafts its own Standing Orders by an absolute majority of its members

(2) Sitings are open to the public, nevertheless each of the two Chambers and Parliament in joint session may decide to assemble in private

(3) The decisions of each Chamber and of Parliament are not valid unless the majority of the members are present, and unless they are voted for by a majority of the members present, save where the Constitution provides for a special majority

(4) Members of the Government, even if they are not members of the Chambers, are entitled to attend meetings and are obliged to be present if called upon. They have a right to be heard whenever they request this right

#### **65. Incompatibility**

(1) The law determines cases of ineligibility or incompatibility with the position of Deputy or Senator

(2) No person may be a member of both Chambers at the same time

#### **66. Scrutiny**

Each Chamber decides as to the validity of the admission of its own members and as to cases subsequently arising concerning ineligibility and incompatibility

**67. Independence**

Each Member of Parliament represents the Nation and carries out his duties without restraint of mandate

**68. Indemnity, Immunity**

(1) Members of Parliament may not be proceeded against for opinions expressed or votes given in the exercise of their duties

(2) No member of Parliament may, without the authority of the Chamber to which he belongs, be subject to criminal proceedings, nor be arrested or otherwise deprived of his personal liberty, nor subjected to search warrants on his person or in his home unless he be caught in the act of committing an offence for which an order of arrest is compulsory

(3) A similar authority is required to arrest or keep in a state of detention a member of Parliament in the execution of a sentence even if it be irrevocable

**69. Allowance**

Members of Parliament receive an allowance as laid down by law

**Section II—The Drafting of Laws****70. Legislative Power**

Legislative duties are carried out jointly by the two Chambers

**71. Initiative**

(1) Legislative initiative pertains to the Government, to each member of the two Chambers, and to those organs and bodies on whom it is conferred by Constitutional law

(2) The people exercise initiative in legislation through the proposal, supported by not less than 50,000 voters, of a Bill drafted in the form of articles

**72. Legislative Proceedings**

(1) Every Bill submitted to one of the Chambers is, according to the Standing Orders, examined by a Committee and then by the Chamber itself which approves it, Article by Article, and subsequently with a final vote. The Standing Orders provide an abbreviated procedure for Bills declared to be urgent

(2) They also lay down in what cases and in what manner the examination and approval of Bills shall be submitted to committees, including Standing Committees so composed as to reflect the various proportions of the Parliamentary groups. Furthermore, in such cases, a Bill, until it is finally voted upon is submitted to the Chamber, if the Government or one-tenth of the members of the Chamber or one-fifth of the Committee demand that it be debated and voted on by the Chamber itself or submitted to the latter for its final approval with a nominal vote. The Standing Orders decide as to the way in which the work of the Committees shall be divulged

(3) The normal procedure for the debating and voting of Bills by the Chamber is always applied in the case of Bills of a constitutional and electoral nature and for those delegating legislative power, for authority to ratify international treaties, and for voting on budgets and rectified budgets

### **73. Promulgation**

(1) Laws are promulgated by the President of the Republic within a month of their having been voted

(2) If the two Chambers, each with an absolute majority among its own members, declare a Bill to be urgent, it is promulgated within the time laid down in the Bill itself

(3) Laws are published immediately after they have been promulgated and come into force on the fifteenth day after their publication, unless the laws themselves provide otherwise

### **74. Veto**

(1) The President of the Republic, before promulgating a law, may request further discussion by means of a message to both Chambers in which the reasons for such action are set forth

(2) If the Chambers vote the Bill once more, the law must be promulgated

### **75. Referendum**

(1) A popular referendum is held to decide on the total or partial repeal of a law or of a measure having force of law if it is demanded by 500,000 voters or by five Regional Councils

(2) Referenda are not allowed in the case of fiscal or budget laws, amnesties or pardons, or laws authorizing the ratification of international treaties

(3) All citizens entitled to vote for the election of members of the Chamber of Deputies are entitled to take part in a referendum

(4) The proposal submitted to referendum is approved if the majority of those eligible have participated in the voting, and if it has received a majority of valid votes

(5) The methods for carrying out a referendum are laid down by law

### **76. Ordinances**

The exercise of legislative functions may not be delegated by the Government save by the laying down of principles and criteria and only for a limited period of time and for definite objects

### **77. Decrees, Provisional Measures**

(1) The Government may not, unless properly delegated by the Chambers, issue decrees having the value of ordinary laws

(2) When, in exceptional cases of necessity and urgency, the Government issues, on its own responsibility, provisional measures having force of law, it

shall on the same day submit them for conversion into law to the Chambers which, even if they have been dissolved, are expressly summoned for that purpose and shall meet within five days

(3) Decrees lose effect as of the date of issue if they are not converted into law within sixty days of their publication. The Chambers may, however, approve laws to regulate legal questions arising out of decrees not yet converted into law.

#### 78. State of War

The Chambers declare a state of war and confer the necessary powers on the Government

#### 79. Amnesty

(1) The right of amnesty and indult are granted by the President of the Republic, on the basis of laws enacted by the Chambers delegating such power.

(2) Amnesty and indult are not applicable in the case of offenses committed subsequent to the proposal for delegating such authority

#### 80. Ratification of Treaties

The Chambers authorize, by law, ratification of international treaties of a political nature, or which provide for arbitration or judicial regulation, or imply modifications to the nation's territory or financial burdens, or to laws

#### 81. Budgets

(1) The Chambers vote the budgets and the audited accounts submitted by the Government each year

(2) The right to execute the provisional budget may not be granted save by law and for periods of not over four months

(3) No new taxes or new expenditure can be established by the law approving the budget

(4) In all other laws implying new or additional expenditure the means for covering it must be set forth

#### 82. Inquiries

(1) Each Chamber may order inquiries into matters of public interest

(2) To this end, it appoints a Committee of its own members so composed as to represent the proportions of the various political groups. The Committee of Enquiry carries out its investigations and examination with the same powers and the same limitations as the judicial authorities

### Title II—The President of the Republic

#### 83. Presidential Elections

(1) The President of the Republic is elected by Parliament during a joint session of both Chambers

(2) Three delegates from every Region, elected by the Regional Council in such a manner as to ensure the representation of minorities, take part in the election

(3) The Valle d'Aosta is represented by only one delegate

(4) Presidential elections take place by secret ballot with a majority of two-thirds of the Assembly. After the third ballot an absolute majority is sufficient

#### **84. Eligibility, Incompatibility, Allowance**

(1) Any citizen of fifty years of age enjoying civil and political rights is eligible for election as President of the Republic

(2) The office of President of the Republic is incompatible with any other office

(3) The allowances and endowments of the President are established by law

#### **85. Term**

(1) The Presidential term shall be seven years

(2) Thirty days before the term lapses the Speaker of the Chamber of Deputies summons Parliament in joint session together with the Regional delegates to elect the new President of the Republic

(3) If Parliament has been dissolved or is to be dissolved within three months, the election is held within fifteen days of the meeting of the new Chambers. In the interval, the powers of the existing President are prolonged

#### **86. Speaker of the Senate**

(1) Should the President prove to be unable to fulfill his duties, they shall be carried out by the Speaker of the Senate

(2) In case of permanent incapacity or death or resignation of the President of the Republic, the Speaker of the Chamber of Deputies provides for the election of a new President of the Republic within fifteen days, unless a longer period be foreseen because the Chambers are to be dissolved or because their term has less than three months to expire

#### **87. Head of State, Functions**

(1) The President of the Republic is the Head of the State and represents the unity of the Nation

(2) He may send messages to Parliament

(3) He provides for the election of a new Parliament and authorizes the date of its first meeting

(4) He authorizes the submission to Parliament of Bills moved by the Government

(5) He promulgates laws and issues decrees having the value of laws and regulations

(6) He provides for a referendum in such cases as are laid down in the Constitution

(7) He appoints, in the cases laid down by the law, the officials of the State

(8) He accredits and receives diplomatic representatives and ratifies international treaties, provided they be authorized by Parliament whenever such authorization is necessary

(9) He commands the Armed Forces, presides over the Supreme Defence Council as constituted by law, and declares a state of war when it has been decided by Parliament

(10) He presides over the Superior Magistrate Council

(11) He may grant pardons and commute court sentences

(12) He confers the honors of the Republic

#### **88. Dissolution of Parliament**

(1) The President of the Republic may dissolve one or both Chambers after consultation with their Speakers

(2) He may not exercise this right during the last six months of his term of office

#### **89. Countersignature**

(1) No act of the President is legal unless it is countersigned by the Ministers who have submitted it and accept his responsibility

(2) Measures having the value of law and such others as are laid down by law shall also be countersigned by the President of the Council of Ministers (Prime Minister)

#### **90. Presidential Indemnity**

The President of the Republic cannot be held responsible for acts carried out in the exercise of his duties, save in cases of high treason or breaches of the Constitution.

#### **91. Oath of Loyalty**

Before taking office, the President of the Republic shall swear an oath of loyalty to the Republic and to the Constitution before Parliament in joint session

### **Title III—The Government**

#### **Section I—The Council of Ministers**

#### **92. Executive Power**

(1) The Government of the Republic consists of the President of the Council and of the Ministers jointly constituting the Council of Ministers

(2) The President of the Republic appoints the President of the Council and the Ministers who are proposed

#### **93. Oath**

Before assuming office, the President of the Council and the Ministers shall be sworn in before the President of the Republic

**94. Governmental Elections**

- (1) The Government must enjoy the confidence of the two Chambers
- (2) Each Chamber grants or refuses its confidence by a motion in which it gives its reasons and which is submitted to a nominal vote
- (3) Within ten days of its formation, the Government shall present its program to Parliament to obtain its vote of confidence
- (4) The contrary vote of one or of both Chambers on a Government proposal does not necessitate resignation
- (5) A vote of no confidence must be signed by at least one-tenth of the members of the Chamber and can only be debated three days after it has been submitted

**95. Functions**

- (1) The President of the Council conducts, and is responsible for, the general policy of the Government. He maintains unity in general political and administrative policy, and promotes and coordinates the activities of the Ministers
- (2) Ministers are jointly responsible for the decisions of the Cabinet as a whole, and individually for those of their own particular departments
- (3) The law contemplates regulations concerning the Presidency of the Council of Ministers and establishes the number, responsibilities, and organization of the various Ministries

**96. Impeachment**

The President of the Council and the Ministers may be impeached by Parliament in joint session for offenses committed in the exercise of their duties

***Section II—Public Administration*****97. Rule of Law**

- (1) Public departments are organized according to the provisions of the law, so that proper conduct and impartiality of administration shall be guaranteed
- (2) The competence, duties, and responsibilities of public officials are laid down in regulations on public departments
- (3) Appointments in the public administration are secured by competitive entry, unless otherwise laid down by law

**98. Independence of Officials**

- (1) Public officials are exclusively at the service of the Nation
- (2) If they are members of Parliament they cannot be promoted save by seniority
- (3) Limitations to the right of registering as members of political parties may be laid down by law for members of the Judiciary, members of the

fighting services on active duty, police officials and agents, and diplomatic and consular representatives abroad

### ***Section III—Auxiliary Bodies***

#### **99. Council of Economy and Labour**

(1) The National Council of Economy and Labour is composed, according to the provisions of the law, of experts and representatives of productive branches, in such a manner that their numerical importance and their qualifications are properly taken into consideration

(2) It is an advisory organ to Parliament and to the Government for such questions and duties as are attributed to it by law

(3) It has the right to promote legislation and may contribute to the drafting of economic and social laws according to the principles, and within the limits laid down by law

#### **100. Council of State**

(1) The Council of State is an advisory organ on judicial-administrative matters and ensures the legality of public administration

(2) The Court of Accounts (State Auditor's Department) exercises a form of preventive control on the legitimacy of Government measures and of subsequent control on the management of the budget. It takes part, in the cases and in the manner laid down by law, in the control of the financial management of those bodies to which the State normally contributes. It reports directly to Parliament on the results of the audit so executed

(3) The law ensures the independence of these two organs and of their members *vis-a-vis* of the Government

## **Title IV—The Judiciary**

### ***Section I—Jurisdictional Organization***

#### **101. Judicial Power**

(1) Justice is administered in the name of the people

(2) The Judges are subject only to the laws

#### **102. Judges**

(1) The duties of the judiciary are carried out by permanent Judges appointed and governed according to the provisions laid down in regulations on legal structure

(2) No special Judges may be appointed, but specialized sections may be set up and attached to the normal judicial organs for dealing with specific matters, and properly qualified citizens who are not members of the judiciary may participate

(3) The law lays down the reasons and the manner in which private persons participate directly in the administration of justice

**103. Council of States, Court of Accounts, Military Tribunals**

(1) The Council of State and other bodies concerned with administrative justice safeguard the legitimate interests of public administration and even those subjective rights that are foreseen by law

(2) The Court of Accounts has jurisdiction over matters of public accounts and such other questions as are specified by law

(3) Military Tribunals in war time have jurisdiction as authorized by law. In peace time their jurisdiction is limited to military offenses committed by members of the Armed Services

**104. Independent Judiciary**

(1) The Judiciary is an independent structure and is not subject to any other authority

(2) The President of the Republic is Chairman of the Superior Magistrate Council

(3) The senior Judge and the Public Prosecutor of the Court of Cassation are *ipso jure* members of it

(4) Of the other members, two-thirds are elected by all regular Judges of different categories, and one-third by Parliament in joint session, selection being made among professors of law faculties and lawyers of at least fifteen years standing

(5) The Council elects an Assistant Chairman from among the members chosen by Parliament

(6) The elected members hold office for four years and are not immediately re-eligible

(7) While they are in office they may not be registered on the Rolls of the legal profession, nor be members either of Parliament or of a Regional Council

**105. Superior Magistrate Council**

According to regulations, the Superior Magistrate Council is entrusted with the appointment, assignment, transfer, promotion, and disciplinary measures concerning the judges

**106. Qualification**

(1) Entry to the judiciary is by competitive examination

(2) According to the regulations, honorary Magistrates may be appointed, even by election, to perform all the duties attributed to individual Judges

(3) On the proposal of the Superior Magistrate Council, professors of law and lawyers of at least fifteen years standing and registered in the special Rolls entitling them to practice in the senior courts may be appointed as Councilors of the Supreme Court of Cassation for exceptional merits

**107. Disciplinary Measures**

(1) Judges cannot be removed from office. They may not be dismissed or suspended from their duties, nor transferred to other courts or duties, save by

a decision of the Superior Magistrate Council taken for reasons and with guarantees for their defence laid down by regulations or with their own consent

(2) The Minister of Justice is entitled to undertake disciplinary action

(3) Judges differ from one another only on account of their different functions

(4) The Public Prosecutor is safeguarded by the guarantees laid down in the regulations

#### 108. Court Structure

(1) The rules governing legal structure and every judicial office are established by law

(2) The law ensures the independence of the Judges of special courts, Public Prosecutors attached to these courts and other persons taking part in the administration of justice

#### 109. Judicial Police

The Judicial Police are at the direct disposal of the judiciary.

#### 110. Minister of Justice

Without prejudice to the competence of the Superior Magistrate Council, the organization and operation of services concerned with the administration of law are entrusted to the Minister of Justice

### *Section II—Regulations on Justice*

#### 111. Legal Proceedings

(1) Valid reasons must be provided for all legal proceedings

(2) Appeals to the Supreme Court of Cassation are always allowed against sentences and against measures concerning personal liberty delivered by the ordinary or special courts when violation of law occurs. These provisions may be abolished only in the case of sentences passed by Military Tribunals in time of war

(3) Appeals to the Supreme Court of Cassation against decisions of the Council of State and of the Court of Accounts (State Auditor's Department) are only allowed for motions concerning jurisdiction

#### 112. Penal Proceedings

The Public Prosecutor is responsible for instituting penal proceedings

#### 113. Recourse to the Courts

(1) Claims for protection of rights in matters of legitimate interest before the organs of normal or administrative justice are always allowed against decisions taken by public administration

(2) Such jurisdictional protection may not be exclusive or limited to special claims or to specific decisions

(3) The law lays down those jurisdictional organs which may annul decisions of public administration according to the provisions established

### *Title V—The Regions, Provinces, and Communities*

#### **114. Local Entities**

The Republic is divided into Regions, Provinces, and Communities

#### **115. Autonomy**

The Regions are constituted as autonomous territorial units with their own powers and functions according to the principles established by the Constitution

#### **116. Special Forms of Autonomy**

Particular forms and conditions of autonomy, in accordance with special statutes adopted by constitutional law, are attributed to Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venetia Giulia, and the Valle d'Aosta

#### **117. Regional Powers**

(1) Within the limits of the fundamental principles established by the laws of the State, the Region legislates in regard to the following matters, provided that such legislation is not in contrast with the interests of the Nation or of other Regions

— Organization of the offices and the administrative bodies dependent on the Region;

— Town boundaries,

— Urban and rural police,

— Fairs and markets,

— Public charities and health and hospital assistance,

— Vocational training of artisans and scholastic assistance,

— Museums and libraries of local bodies,

— Town planning,

— Tourist trade and hotel industry,

— Tram and motor coach services of regional interest,

— Roads, aqueducts, and public works of regional interest,

— Lake navigation and ports;

— Mineral and spa waters,

— Quarries and peat bogs,

— Hunting,

— Fishing in lake and river waters,

— Agriculture and forestry,

— Artisanry,

— Other matters indicated by constitutional laws

(2) The laws of Republic may delegate power to the Region to issue norms for their enforcement

#### 118. Administration

(1) The administrative functions pertaining to the subjects listed in the preceding Article reside in the Regions, except those of exclusively local interest which, by the laws of the Republic, may be delegated to the Provinces, Communities, or other local authorities

(2) The State may, by law, delegate the exercise of other functions of an administrative nature to the Region.

(3) The Region normally exercises its administrative functions by delegating them to the Provinces, Communities, or other local authorities, or by administering them through their offices

#### 119. Financial Autonomy

(1) The Regions have financial autonomy within the forms and limits established by the laws of the Republic which coordinate this regional autonomy with the finances of the State, the Provinces and the Communities

(2) The Regions are assigned their own taxes and quotas of Exchequer taxes according to the expenditure necessary to the fulfillment of their normal functions

(3) The State assigns by law special allocations to single Regions for specific purposes and particularly for the development of southern and insular Italy

(4) The Region has its own demesne and patrimony according to the requirements of the laws of the Republic

#### 120. Duties

(1) The Regions may not levy import or export duties or duties on transit between Regions

(2) The Regions may not adopt provisions which hinder the free movement of persons or goods between Regions

(3) The Regions may not limit the right of citizens to exercise their professions, employment, or labour in any part of national territory

#### 121. Regional Institutions

(1) The official bodies of the Region are: the Regional Council, the Junta, and its President

(2) The Regional Council exercises the legislative and administrative power granted to the Region and all other functions conferred on it by the Constitution and by law. It may propose Bills to Parliament

(3) The Junta is the executive body of the Regions

(4) The President of the Junta represents the Region, he promulgates regional laws and regulations and directs the administrative functions delegated to the Region by the State in accordance with the instructions of Central Government

**122. Rule of Law**

(1) The electoral system and the number and cases of ineligibility and incompatibility of Regional Councilors, are established by the laws of the Republic.

(2) No one may be a member of a Regional Council and a member of either Chamber of Parliament or another Regional Council at the same time.

(3) The Council elects a President from its own members and a President's Office for its functions.

(4) Regional Councilors may not be called upon to answer for opinions expressed or votes cast during the exercise of their duties.

(5) The President and members of the Junta are elected by the Regional Council from among its members.

**123. Regional Statutes**

(1) Every Region has a statute which, in harmony with the Constitution and the laws of the Republic, establishes the norms relative to the internal organization of the Region. The regional statute controls the right of initiative and referendum on laws and provisions of an administrative nature within the Region and the publication of regional laws and regulations.

(2) The Statute is drafted and approved by the Regional Council through an absolute majority of its members and further approved by a law of the Republic.

**124. Government Representative**

A Government representative, residing in the capital of the Region, supervises the administrative functions exercised by Central Government and coordinates them with those of the Region.

**125. Control**

(1) Control of the legitimacy of administrative decisions in the Region is exercised, in decentralized form, by an organ of central government in the manner and within the limits established by the laws of the Republic. In specific cases, the law may admit re-examination of the merits of the case, but only to the extent of promoting, through a motivated request, a re-examination of a controversial decision by the Regional Council.

(2) The Regions have their own first degree courts for administrative actions in accordance with the requirements of the laws of the Republic. The courts may have branches in places other than the regional capital.

**126. Dissolution of Regional Council**

(1) The Regional Council may be dissolved when it performs acts contrary to the Constitution or commits serious violations of the laws, or fails to respond to the request of the Government to replace its Junta or the President of the Junta when these have committed similar acts or violations.

(2) It may be dissolved when, by reason of resignation or through the impossibility of forming a majority, it is no longer in a position to fulfil its duties.

(3) It may also be dissolved for reasons of national security.

(4) The dissolution of the Regional Council is effected by a decree of the President of the Republic after an opinion has been offered by a Commission composed of Senators and Deputies, formed according to the laws of the Republic on regional affairs

(5) The Decree of Dissolution is accompanied by the nomination of a Commission composed of three citizens eligible for the Regional Council, which announces the holding of new elections within a period of three months and provides for ordinary administration within the competence of the Junta and for such decisions as cannot be postponed such decisions are subject to ratification by the new Regional Council

#### 127. Approval

(1) Every law approved by the Regional Council shall be communicated to the Government representative who, except in the case of opposition on the part of the Government, must approve it within a period of thirty days from its submission

(2) The law is promulgated within ten days from the date of approval and becomes effective not earlier than fifteen days from its publication. If a law is considered to be urgent by the Regional Council, and the Government of the Republic approves, then its promulgation and date of effect are not subject to the specified periods

(3) The Government of the Republic, when it considers that a law approved by the Regional Council exceeds the competence of the Region or conflicts with the interests of the Nation or with those of other Regions, returns it to the Regional Council within the period established for approval

(4) When the Regional Council approves it again by an absolute majority of its members, the Government of the Republic may, within fifteen days of communication of the fact, submit the question of its legitimacy to the Constitutional Court, and that of its merit, in the case of conflicting interests, to the Chamber of Deputies and the Senate. In case of doubt, the Constitutional Court shall decide on the competent body

#### 128. Provincial Autonomy

The Provinces and the Communities are autonomous bodies within the principles laid down by the general laws of the Republic, which determine their function

#### 129. Decentralization

(1) The Provinces and the Communities are also territorial units of State and regional decentralization

(2) The territory contained within the Province may also be subdivided into districts with exclusively administrative functions, for the sake of further decentralization

#### 130 Provincial Institutions

(1) A regional body, constituted in accordance with procedure established by the laws of the Republic, exercises in a decentralized form,

control over the legitimacy of decisions taken by the Provinces, Communes and other local bodies

(2) In cases specified by law, control of an issue of general interest may be exercised in the form of a reasoned request submitted to the competent assembly for re-examination of decisions taken previously.

### 131. Instituted Regions

The following Regions are instituted: Piedmont; Valle d'Aosta; Lombardy; Trentino-Alto Adige; Venetia; Friuli-Venetia Giulia; Liguria; Emilia-Romagna; Tuscany; Umbria; Marche; Latium; Abruzzo; Molise; Campania; Apulia; Basilicata; Calabria; Sicily; Sardinia.

### 132. Delimitation

(1) By constitutional law, the Regional Council having been heard, arrangements may be made for the merging of existing Regions or the creation of new Regions with a minimum of one million inhabitants when such a request is made by as many Councils as represent at least one third of the interested populations and when the proposal has been approved by a referendum voted by the majority of the interested populations.

(2) By means of a referendum and by the laws of the Republic, the Regional Council having been heard, consent may be given for Provinces and Communities so desiring to be detached from one Region and attached to another.

### 133. Provincial Boundaries

(1) Changes of provincial boundaries and the institution of new Provinces within the area of a Region, are established by laws of the Republic after request from the Communities and the approval of the Region itself.

(2) The Region, having heard the interested population, may, by its own enactment, establish new Communities and modify their boundaries and names within its own territory.

## Title VI—Constitutional Guarantees

### Section I—The Constitutional Court

### 134. Jurisdiction

The Constitutional Court decides:

— on controversies concerning the constitutional legitimacy of laws and acts having the force of law, emanating from Central and Regional Government;

— on controversies arising over constitutional assignment of powers within the State, between the State and the Regions and between Regions.

— on impeachments of the President of the Republic and Ministers according to the norms of the Constitution.

**135. Composition**

(1) The Constitutional Court is composed of fifteen judges, a third of whom are nominated by the President of the Republic, one-third by Parliament in joint session, and one-third by the members of the ordinary and Administrative Supreme Courts

(2) The Judges of the Constitutional Court are chosen from among the Magistrates of the High and Administrative Courts, including those in retirement, professors of law, and lawyers who have been in practice for a minimum period of twenty years

(3) The Court elects its President from among its members

(4) Judges are nominated for a period of twelve years and some may be retained in office according to the norms established by law: they are not re-eligible immediately

(5) The office of Judge of the Constitutional Court may not be held concurrently with that of a member of Parliament, a member of a Regional Council, the exercise of the legal profession or with any position or office indicated by law

(6) Following the same procedure used in the appointment of the Judges of the Constitutional Court, Parliament shall draft a list of persons who, in case of necessity, shall be chosen to take part in proceedings following impeachment of the President of the Republic, the Prime Minister and the Ministers

**136. Functions**

(1) When the Court declares a norm of law, or an act having the force of law, to be unconstitutional, the norm ceases to have effect from the day following the publication of the decision

(2) The decision of the Court is published and is communicated to Parliament and the interested Regional Councils in order that provisions may be made in constitutional form where considered necessary

**137. Time Limits**

(1) A constitutional law establishes the conditions, forms, and time limits for decisions on constitutional legitimacy and guarantees the independence of the Judges of the Court

(2) All other norms necessary for the constitution and functioning of the Court are established by ordinary legislation

(3) The decisions of the Constitutional Court may not be contested

**Section II—Amendments to the Constitution****138. Proceedings**

(1) Amendments to the Constitution and other constitutional laws are passed by the Chamber of Deputies and the Senate in two successive sessions at an interval of not less than three months and are approved by an absolute majority of the members of each Chamber after a second reading

(2) The laws themselves are submitted to popular referendum when, within three months of their publication, a demand shall be made by one fifth of the members of either Chamber or by 500,000 electors or by five Regional Councils. A law submitted to referendum shall not be promulgated unless approved by a majority of valid votes.

(3) A referendum shall not be held if the law has been approved in both Chambers, during a second reading, by a majority of two-thirds of the members of each Chamber.

### 139. Restriction

The Republican structure is not subject to constitutional amendment

## PART III

### TRANSITIONAL AND FINAL PROVISIONS

#### I. Provisional Head of State

When the Constitution becomes effective, the Provisional Head of the State shall assume the title of President of the Republic and exercise the attributes of this office.

#### II. Presidential Election

If at the time of the election of the President of the Republic the Regional Councils have not all been constituted, then only the members of the two Chambers shall participate in the said election.

#### III. First Senate

(1) By a decree of the President of the Republic, for the first term the Senate will include among its members deputies of the Constituent Assembly who have the necessary qualifications by law for election to the Senate and who

- have been President of the Council of Ministers, or Speaker or President of legislative bodies,

- have been members of the dissolved Senate,

- have been three times elected, including election to the Constituent Assembly,

- were dismissed during the session of the Chamber of Deputies of November 9, 1926,

- have suffered imprisonment for a period of not less than five years in consequence of sentences passed by the Special Fascist Court for State Defence.

(2) Members of the dissolved Senate who were also members of the National Consultative Assembly are also nominated Senators, by decree of the President of the Republic.

(3) The right to nomination as Senator may be renounced prior to signature of the decree of nomination. Acceptance of candidacy in political elections implies renunciation of the right to be nominated Senator.

**IV. Molise**

In the case of first elections to the Senate, Molise is considered as a Region in itself, the number of its Senators depending on the proportion of its population

**V. International Treaties**

The provisions contained in Article 80 of the Constitution, insofar as they concern international treaties which impose charges on the budget or modifications of law, shall be effective from the date of convocation of the zonal treaties which impose charges on the budget or modifications of law, shall be effective from the date of convocation of the two Chambers

**VI. Judiciary Revision**

(1) Within five years of the effective date of the Constitution, a revision of the special organs of jurisdiction now existing shall be undertaken, with the exception of the Council of State, the Court of Accounts, and Military Tribunals

(2) Within one year of the said date, provision shall be made by law for the reorganization of the Supreme Military Tribunal according to Article 111.

**VII. Preliminary Revision**

(1) Until such time as new legislation on the Judiciary shall bring it into conformity with the Constitution, the norms at present in force shall continue to be observed

(2) Until such time as the Constitutional Court shall begin to function, decisions over controversies as under Article 134 shall be rendered according to the forms and limits existing prior to the effective date of the Constitution

(3) The Judges of the Constitutional Court, nominated for the initial composition of that Court, shall not be subject to partial re-election and shall remain in office for a period of twelve years

**VIII. Regional Councils**

(1) The election of the Regional Councils and the elective organs of provincial administration shall take place within one year of the effective date of the Constitution

(2) The laws of the Republic regulate, for all branches of public administration, the transfer of Central Government powers attributed to the Regions. Until provisions have been made for the reorganization and distribution of administrative functions among local Government, the Provinces and Communities shall retain the functions they exercise at the present time as well as others which may be delegated to them by the Regions

(3) The laws of the Republic regulate the transfer of public officials and dependents to the Regions, including those of Central Government, whenever such transfer shall be deemed necessary because of reorganization

(4) In setting up their departments, the Regions must, except in cases of necessity, draw personnel from the Civil Service and local public bodies

**IX. Local Autonomy**

Within three years of the effective date of the Constitution, the Republic shall adjust laws according to the requirements of local autonomy and the legislative competence attributed to the Regions

**X. Friuli-Venetia Julia**

The general norms contained in Title V of Part Two shall be provisionally applied to Friuli-Venetia

Julia referred to in Article 116, the protection of linguistic minorities remains binding as per Article 6.

**XI. Formation of Regions**

Other Regions may be formed during the first five year period of the Constitution, by constitutional enactment and in modification of the list contained in Article 131, without recourse to the procedure required under Article 132 (1), but with the obligation to hear the opinions of the interested populations

**XII. Fascist Party**

(1) Reorganization of the former Fascist Party, under any form whatsoever, is prohibited.

(2) Notwithstanding Article 48, temporary limitations are established by law, for a period of not over five years from the elective date of the Constitution, on the suffrage and eligibility of the responsible heads of the Fascist regime.

**XIII. House of Savoy**

(1) The members and descendants of the House of Savoy are not electors and may not hold any public office or elective position.

(2) Former kings of the House of Savoy, their wives and their male descendants may not enter or remain in Italian territory.

(3) Property within Italian territory belonging to the former kings of the House of Savoy, their wives and their male descendants, revert to the State Transfers and the establishment of royal rights on such properties, which took place after June 2, 1946, are null and void.

**XIV. Nobility**

(1) Titles of nobility are not recognized.

(3) The predicates of those existing before October 28, 1922, serve as part of the proper name.

(4) The Order of Ss Maurizio e Lazzaro is preserved as a hospital corporation and functions according to the methods established by law.

(5) The law regulates the suppression of the Heraldic Council

**XV. Old Organizational Law**

When the Constitution goes into effect, the legislative decree of the Lieutenant of the Realm of June 25, 1944, No 151 on the provisional organization of the State is held to be converted to law.

**XVI. Old Constitutional Law**

Within one year from the effective date of the Constitution, the preceding constitutional laws, which have not been explicitly or implicitly abrogated, shall be revised and coordinated to conform with the Constitution itself

**XVII. New Statutes**

(1) The Constituent Assembly shall be convened by its President before January 31, 1948, to decide on the laws for the election of the Senate of the Republic, on the special regional statutes and on the law governing the press

(2) Prior to the date of the elections, the Constituent Assembly may be convened whenever there is need to decide on matters within its competence, under Article 2 (1) and (2), and Article 3 (1) and (2), of the legislative decree of March 16, 1946 No 98

(3) The Standing Committees shall continue to function during this period

(4) The Legislative Committees shall submit all Bills transmitted to them, with appropriate observations and proposals of amendments to the Government

(5) Deputies may question the Government and request written replies

(6) With reference to paragraph (2), the Constituent Assembly is convened by its President on the written request of the Government or at least two hundred deputies

**XVIII. Promulgation**

(1) This present Constitution shall be promulgated by the Provisional Head of the State within five days of its approval by the Constituent Assembly, and shall come into effect as from January 1st, 1948

(2) The text of the Constitution shall be deposited in the Town Hall of each Community of the Republic and shall be on view during the whole of 1948 in order that every citizen shall have knowledge of it

(3) The Constitution, bearing the Seal of State, shall be inserted in the Official Records of the Laws and Decrees of the Republic

(4) The Constitution shall be faithfully observed as the fundamental law of the Republic by all citizens and organs of the State

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# 21

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## CONSTITUTION OF JAPAN

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*[November 3, 1946]*

### PREFACE

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith. We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal, and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations. We, the Japanese people, pledge our national honour to accomplish these high ideals and purposes with all our resources.

## CHAPTER I

### THE EMPEROR

1. The Emperor shall be the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power

2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

3. The advice and approval of the Emperor in matters of State, and the Cabinet shall be responsible therefor

4. The Emperor shall perform only such acts in matters of State as are provided for in this Constitution and he shall not have powers related to Government

2) The Emperor may delegate the performance of his acts in matters of State as may be provided for by law

5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of State in the Emperor's name. In this case, paragraph one of the preceding Article will be applicable

6. The Emperor shall, appoint the Prime Minister as designated by the Emperor, appoint the Chief Judge of the Supreme Court as designated by the Cabinet

7. The Emperor shall, with the advice and approval of the Cabinet, perform the following acts in matters of State on behalf of the people

(1) Promulgation of amendments of the constitution, laws, cabinet orders and treaties

(2) Convocation of the Diet

(3) Dissolution of the House of Representatives

(4) Proclamation of general election of members of the Diet

(5) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers

(6) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights

(7) Awarding of honors

(8) Attestation of instruments of ratification and other diplomatic documents as provided for by law.

(9) Receiving foreign ambassadors and ministers.

(10) Performance of ceremonial functions.

8. No property can be given to, or received by the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet

## CHAPTER II

### RENUNCIATION OF WAR

9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes

2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognized

## CHAPTER III

### RIGHTS AND DUTIES OF THE PEOPLE

10. The conditions necessary for being a Japanese national shall be determined by law

11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights

12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare

13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs

14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin

2) Peers and peerage shall not be recognized

3) No privilege shall accompany any award of honour, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it

15. The people have the inalienable right to choose their public officials and to dismiss them

2) All public officials are servants of the whole community and not of any group thereof

3) Universal adult suffrage is guaranteed with regard to the election of public officials

4) In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made

16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters, nor shall any person be in any way discriminated against for sponsoring such a petition

17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official

18. No person shall be held in bondage of any kind Involuntary servitude, except as punishment for crime, is prohibited

19. Freedom of thought and conscience shall not be violated

20. Freedom of religion is guaranteed to all No religious organization shall receive any privileges from the State, nor exercise any political authority.

2) No person shall be compelled to take part in any religious acts, celebration, rite or practice

3) The State and its organs shall refrain from religious education or any other religious activity

21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed

2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated

22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare

2) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate

23. Academic freedom is guaranteed

24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis

2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes

25. All people shall have the right to maintain the minimum standards of wholesome and cultured living

2) In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health

26. All people shall have the right to receive an equal education correspondent to their ability, as provided for by law

2) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law Such compulsory education shall be free

27. All people shall have the right and the obligation to work

2) Standards for wages, hours, rest and other working conditions shall be fixed by law

3) Children shall not be exploited

28. The right of workers to organize and to bargain and act collectively is guaranteed

29. The right to own or to hold property is inviolable

2) Property rights shall be defined by law, in conformity with the public welfare

3) Private property may be taken for public use upon just compensation therefor

30. The people shall be liable to taxation as provided for by law

31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law

32. No person shall be denied the right of access to the courts

33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed

34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall he be detained without adequate cause, and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel

35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33

2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer

36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden

37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal

2) He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense

3) At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State

38. No person shall be compelled to testify against himself

2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence

3) No person shall be convicted or punished in cases where the only proof against him is his own confession

39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he had been acquitted, nor shall he be placed in double jeopardy

40. Any person may, in case he is acquitted after he has been arrested or detained, sue the State for redress as provided for by law

## CHAPTER IV

### THE DIET

41. The Diet shall be the highest organ of the State power, and shall be the sole law-making organ of the State

42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors

43. Both Houses shall consist of elected members, representative of all the people

2) The number of the members of each House shall be fixed by law

44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income

45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved

46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years

47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law

48. No person shall be permitted to be a member of both Houses simultaneously

49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law

50. Except in cases as provided for by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House

51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

52. An ordinary session of the Diet shall be convoked once per year

53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation

54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election

2) When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may, in time of national emergency, convoke the House of Councillors in emergency session.

3) Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

56. Business cannot be transacted in either House unless one-third or more of total membership is present.

2) All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided for in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

2) Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

3) Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

58. Each House shall select its own President and other officials.

2) Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

59. A Bill becomes a law on passage by both Houses, except as otherwise provided for by the Constitution.

2) A Bill, which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

3) The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

4) Failure by the House of Councillors to take final action within sixty (60) days after receipt of a Bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said Bill by the House of Councillors.

60. The budget must first be submitted to the House of Representatives.

2) Upon consideration of the budget, when the House of Councillors

makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet

61. The second paragraph of the preceding Article applies also the Diet approval required for the conclusion of treaties

62. Each House may conduct investigations in relation to Government, and may demand the presence and testimony of witnesses, and the production of records

63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on Bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations

64. The Diet shall set up an impeachment court from among the members of both Houses for the purposes of trying those Judges against whom removal proceedings have been instituted

2) Matters relating to impeachment shall be provided for by law

## CHAPTER V THE CABINET

65. Executive power shall be vested in the Cabinet

66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law

2) The Prime Minister and other Ministers of State must be civilians

3) The Cabinet shall, in the exercise of executive power, be collectively responsible to the Diet

67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business

2) If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet

68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet

2) The Prime Minister may remove the Ministers of State as he chooses

69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days

70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse

71. In the cases mentioned in the two preceding Articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed

72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches

73. The Cabinet shall, in addition to other general administrative functions, perform the following functions

(1) Administer the law faithfully, conduct affairs of State

(2) Manage foreign affairs

(3) Conclude treaties However, it shall obtain prior or, depending on circumstances subsequent approval of the Diet

(4) Administer the civil service, in accordance with standards established by law

(5) Prepare the budget, and present it to the cabinet orders in order to execute the provisions of this Constitution and of the law However, it cannot include penal provisions in such cabinet orders unless authorized by such law

(6) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights

74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister

75. The Ministers of State shall not, during their tenure of office, be subject to legal action without the consent of the Prime Minister However, the right to take that action is not impaired hereby

## CHAPTER VI

### JUDICIARY

76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law

2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power

3) All Judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws

77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters

relating to attorneys, the internal discipline of the courts and the administration of judicial affairs

2) Public procurators shall be subject to the rule-making power of the Supreme Court

3) The Supreme Court may delegate the power to make rules for inferior courts to such courts

78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against Judges shall be administered by any executive organ or agency

79. The Supreme Court shall consist of a Chief Judge and such number of Judges as may be determined by law, all such Judges excepting the Chief Judge shall be appointed by the Cabinet

2) The appointment of the Judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter

80. The Judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law

2) The Judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office

81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act

82. Trials shall be conducted and judgement declared publicly

2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in CHAPTER III of this Constitution are in question shall always be conducted publicly

## CHAPTER VII

### FINANCE

83. The power to administer national finances shall be exercised as the Diet shall determine

84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe

85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet

86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year

87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet must get subsequent approval of the Diet for all payments from the reserve fund

88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget

89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority

90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Diet, together with the statement of audit, during the fiscal year immediately following the period covered

2) The organization and competency of the Board of Audit shall be determined by law

91. At regular intervals and at least annually the Diet and the people on the State of national finances

## *CHAPTER VIII*

### **LOCAL SELF-GOVERNMENT**

92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy

93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law

2) The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities

94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law

95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law

## *CHAPTER IX*

### **AMENDMENTS**

96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each

House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify

2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution

## CHAPTER X

### SUPREME LAW

97 The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free, they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate

98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of Government, or part thereof, contrary to the provisions hereof, shall have legal force or validity

2) The treaties concluded by Japan and established laws of nations shall be faithfully observed

99. The Emperor or the Regent as well as Ministers of State, members of the Diet, Judges, and all other public officials have the obligation to respect and uphold this Constitution

## CHAPTER XI

### SUPPLEMENTARY PROVISIONS

100 This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation

2) The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph

101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted

102 The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law

103 The Ministers of State, members of the House of Representatives, and Judges in office on the effective date of this Constitution, and all other

public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course

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# 22

## CONSTITUTION OF KUWAIT

{Adopted on 11 Nov 1962}

### PREAMBLE

In the name of Allah, the Beneficent, the Merciful, We, Abdullah al-Salim al-Sabah, Amir of the State of Kuwait, desiring to use the means of democratic rule for our dear Country, and, having faith in the role of this Country in furthering Arab nationalism and the promotion of world peace and human civilisation, and, striving towards a better future in which the Country enjoys greater prosperity and higher international standing, and in which also the citizens are provided with more political freedom, equality, and social justice, a future which upholds the traditions inherent in the Arab nation by enhancing the dignity of the individual, safeguarding public interest, and applying consultative rule yet maintaining the unity and stability of the Country, and, I having considered Law Number 1 of 1962 concerning the system of Government during the period of transition, and, upon the resolution of the Constituent Assembly, do hereby approve this Constitution and promulgate it

### PART I

#### THE STATE AND SYSTEM OF GOVERNMENT

##### 1. Sovereignty, Territorial Integrity

Kuwait is an Arab State, independent and fully sovereign. Neither its sovereignty nor any part of its territory may be relinquished. The people of Kuwait is a part of the Arab Nation.

**2. State Religion**

The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation

**3. Official Language**

The official language of the State is Arabic

**4. Monarchy**

(1) Kuwait is a hereditary Amirate, the succession to which shall be in the descendants of the late Mubarak al-Sabah

(2) The Heir Apparent shall be designated within one year, at the latest, from the date of accession of the Amir

(3) His designation shall be effected by an Amiri Order upon the nomination of the Amir and the approval of the National Assembly which shall be signified by a majority vote of its members in a special sitting

(4) In case no designation is achieved in accordance with the foregoing procedure, the Amir shall nominate at least three of the descendants of the late Mubarak al-Sabah of whom the National Assembly shall pledge allegiance to one as Heir Apparent

(5) The Heir Apparent shall have attained his majority, be of sound mind, and a legitimate son of Muslim parents

(6) A special law promulgated within one year from the date of coming into force of this Constitution shall lay down the other rules of succession in the Amirate. The said law shall be of a constitutional nature and therefore shall be capable of amendment only by the procedure prescribed for amendment of the Constitution

**5. State Symbols**

The flag, emblem, badges, decorations, and the National Anthem of the State shall be specified by law

**6. Democracy**

The System of Government in Kuwait shall be democratic, under which sovereignty resides in the people, the source of all powers. Sovereignty shall be exercised in the manner specified in this Constitution

**PART II****FUNDAMENTAL CONSTITUENTS OF KUWAITI SOCIETY****7. State Goals**

Justice, Liberty, and Equality are the pillars of society, co-operation and mutual help are the firmest bonds between citizens

**8. Guardian State**

The State safeguards the pillars of Society and ensures security, tranquility, and equal opportunities for citizens

**9. Family**

The family is the corner-stone of Society. It is founded on religion, morality, and patriotism. Law shall preserve the integrity of the family, strengthen its ties, and protect under its support motherhood and childhood.

**10. Youth Protection**

The State cares for the young and protects them from exploitation and from moral, physical, and spiritual neglect.

**11. Old Age Protection**

The State ensures aid for citizens in old age, sickness, or inability to work. It also provides them with services of social security, social aid, and medical care.

**12. Arab Heritage**

The State safeguards the heritage of Islam and of the Arabs and contributes to the furtherance of human civilisation.

**13. Education**

Education is a fundamental requisite for the progress of society, assured and promoted by the State.

**14. Science, Arts**

The State shall promote science, letters, and the arts and encourage scientific research therein.

**15. Health Care**

The State cares for public health and for means of prevention and treatment of diseases and epidemics.

**16. Property Rights**

Property, capital, and work are fundamental constituents of the social structure of the State and of the national wealth. All of them are individual rights with a social function as regulated by law.

**17. Public Property**

Public property is inviolable and its protection is the duty of every citizen.

**18. Private Property, Inheritance**

(1) Private property is inviolable. No one shall be prevented from disposing of his property except within the limits of the law. No property shall be expropriated except for the public benefit under the circumstances and in the manner specified by law, and on condition that just compensation is paid.

(2) Inheritance is a right governed by the Islamic Shari'a.

**19. Confiscation**

General confiscation of the property of any person shall be prohibited. Confiscation of particular property as a penalty may not be inflicted except by court judgment in the circumstances specified by law.

**20 National Economy**

The national economy shall be based on social justice. It is founded on fair co-operation between public and private activities. Its aim shall be economic development, increase of productivity, improvement of the standard of living, and achievement of prosperity for citizens, all within the limits of the law.

**21. Natural Resources**

Natural resources and all revenues therefrom are the property of the State. It shall ensure their preservation and proper exploitation, due regard being given to the requirements of State security and the national economy.

**22. Employment, Tenements**

Relations between employers and employees and between landlords and tenants shall be regulated by law on economic principles, due regard being given to the rules of social justice.

**23. Banking**

The State shall encourage both co-operative activities and savings, and supervise the system of credit.

**24. Taxation**

Social justice shall be the basis of taxes and public imposts.

**25. State Burdens**

The State shall ensure the solidarity of society in shouldering burdens resulting from public disasters and calamities, and provide compensation for war damages or injuries received by any person as a result of the discharge of his military duties.

**26. Public Office**

(1) Public office is a national service entrusted to those who hold it. Public officials, in the exercise of their duties, shall aim at the public interest.

(2) Aliens may not hold public offices except in the cases specified by law.

**PART III****PUBLIC RIGHTS AND DUTIES****27. Nationality**

Kuwaiti nationality is defined by law. No deprivation or withdrawal of nationality may be effected except within the limits prescribed by law.

**28 Deportation, Return**

No Kuwaiti may be deported from Kuwait or prevented from returning thereto.

**29. Equality, Human Dignity, Personal Liberty**

(1) All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion

(2) Personal liberty is guaranteed

30. {...}

**31. Arrest, Move, No Torture**

(1) No person shall be arrested, detained, searched, or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of the law.

(2) No person shall be subjected to torture or to degrading treatment.

**32. Nulla Poena Sine Lege, Personal Penalty**

(1) No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force

(2) Penalty is personal

33. {...}

**34. Presumption of Innocence, Right to Trial**

(1) An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured

(2) The infliction of physical or moral injury on an accused person is prohibited

**35. Freedom of Religion and Belief**

Freedom of belief is absolute. The State protects the freedom of practising religion in accordance with established customs, provided that it does not conflict with public policy or morals

**36. Freedom of Opinion and Expression**

Freedom of opinion and of scientific research is guaranteed. Every person has the right to express and propagate his opinion verbally, in writing, or otherwise, in accordance with the conditions and procedures specified by law

**37. Freedom of the Press**

Freedom of the press, printing, and publishing is guaranteed in accordance with the conditions and manner specified by law

**38. Home**

Places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law

**39. Freedom and Secrecy of Communication**

Freedom of communication by post, telegraph, and telephone and the secrecy thereof is guaranteed, accordingly, censorship of communications and disclosure of their contents are not permitted except in the circumstances and manner specified by law

**40. Compulsory and Free Education**

(1) Education is a right for Kuwaitis, guaranteed by the State in accordance with law and within the limits of public policy and morals. Education in its preliminary stages is compulsory and free in accordance with the law

(2) The law lays down the necessary plan to eliminate illiteracy

(3) The State devotes particular care to the physical, moral, and mental development of the youth

**41. Right and Duty to Work**

(1) Every Kuwaiti has the right to work and to choose the type of his work

(2) Work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavour to make it available to citizens and to make its terms equitable

**42. No Forced Labour**

There is no forced labour except in the cases specified by law for national emergency and with just remuneration

**43. Association**

Freedom to form associations and unions on a national basis and by peaceful means is guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union

**44. Assembly**

(1) Individuals have the right of private assembly without permission or prior notification, and the police may not attend such private meetings

(2) Public meetings, demonstrations, and gatherings are permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals

**45. Petition**

Every individual has the right to address the public authorities in writing over his signature. Only duly constituted organizations and bodies corporate have the right to address the authorities collectively

**46. Asylum**

Extradition of political refugees is prohibited

**47. National Defence, Military Service**

National defence is a sacred duty, and military service is an honour for citizens which shall be regulated by law

Articles 48-56]

**48. Taxation, Minimum Standard of Living**

Payment of taxes and public imposts is a duty in accordance with the law which regulates exemption of small incomes from taxes in such a way as to maintain the minimum standard of living

**49. Public Order, Public Morals**

Observance of public order and respect for public morals are a duty incumbent upon all inhabitants of Kuwait

**PART IV****POWERS****CHAPTER I****GENERAL PROVISIONS****50. Separation and Constitutionality of Powers**

The system of Government is based on the principle of separation of powers functioning in co-operation with each other in accordance with the provisions of the Constitution. None of these powers may relinquish all or part of its competence specified in this Constitution

**51. Legislative Power**

The legislative power is vested in the Amir and the National Assembly in accordance with the Constitution

**52. Executive Power**

The executive power is vested in the Amir, the Cabinet, and the Ministers, in the manner specified by the Constitution

**53. Judicial Power**

The judicial power is vested in the courts, which exercise it in the name of the Amir within the limits of the Constitution

**CHAPTER II****THE HEAD OF STATE****54. Head of State, Immunity, Inviolability**

The Amir is the Head of the State. His person is immune and inviolable

**55. Government**

The Amir exercises his powers through his Ministers

**56. Prime Minister**

(1) The Amir, after the traditional consultations, appoints the Prime Minister and relieves him of office. The Amir also appoints Ministers and relieves them of office upon the recommendation of the Prime Minister

(2) Ministers are appointed from amongst the members of the National Assembly and from others

(3) The number of Ministers in all shall not exceed one-third of the number of the members of the National Assembly

#### **57. New Government**

The Cabinet is re-constituted in the manner specified in the preceding Article at the beginning of every legislative term of the National Assembly

#### **58. Responsibility**

The Prime Minister and the Ministers are collectively responsible to the Amir for the general policy of the State. Every Minister also is individually responsible to the Amir for the affairs of his Ministry

#### **59. Powers of the Amir Specified by Law**

The Law referred to in Article 4 specifies the conditions under which the Amir exercises his constitutional powers

#### **60. Oath of the Amir's Office**

Before assuming his powers, the Amir takes the following oath at a special sitting of the National Assembly

"I swear by Almighty God to respect the Constitution and the laws of the State, to defend the liberties, interests, and properties of the people, and to safeguard the independence and territorial integrity of the Country "

#### **61. Deputy Amir**

In the event of his absence outside the Country and the inability of the Heir Apparent to act as Deputy for him, the Amir shall appoint, by an Amiri Order, a Deputy who shall exercise his powers during his absence. The said Amiri Order may include a specified arrangement for the exercise of the said powers on behalf of the Amir, or a limitation of their scope

#### **62. Qualification of Deputy Amir**

The Deputy Amir has to satisfy the qualifications laid down in Article 82. If he is a Minister or a member of the National Assembly, he may not take part in the ministerial functions or in the work of the Assembly during the period he is acting as Deputy for the Amir

#### **63. Oath of the Deputy Amir's Office**

(1) Before assuming his powers the Deputy Amir, at a special sitting of the National Assembly, takes the oath mentioned in Article 60 with the following phrase added thereto

"and be loyal to the Amir "

(2) In case the National Assembly is not in session, the oath shall be taken before the Amir

#### **64. Incompatibilities of the Deputy Amir**

The provisions of Article 131 apply to the Deputy Amir

**65. Promulgation of Laws, Initiative of the Amir**

(1) The Amir has the right to initiate, sanction, and promulgate laws. Promulgation of laws takes place within thirty days from the date of their submission by the National Assembly to the Amir. This period is reduced to seven days in case of urgency. Such urgency is decided upon by a majority vote of the members constituting the National Assembly.

(2) Official holidays are not counted in computing the promulgation.

(3) If the period of promulgation expires without the Head of State demanding reconsideration, the Bill is considered as having been sanctioned and is promulgated.

**66. Bills**

Reference of a Bill for reconsideration is by a decree stating the grounds therefore. If the National Assembly confirms the Bill by a two-thirds majority vote of its members, the Amir sanctions and promulgates the Bill within thirty days from its submission to him. If the Bill does not receive the said majority, it may not be reconsidered during the same session. If the National Assembly, in another session, considers the same Bill by a majority vote of its members, the Amir sanctions and promulgates the Bill as law within thirty days from its submission to him.

**67. Chief-of-Command**

The Amir is the Supreme Commander of the Armed Forces. He appoints and dismisses officers in accordance with the law.

**68. War**

The Amir declares defensive war by decree. Offensive war is prohibited.

**69. Martial Law**

(1) The Amir proclaims Martial Law in the cases of necessity determined by law and in accordance with the procedure specified therein. The proclamation of Martial Law shall be by decree. Such decree is referred to the National Assembly within the fifteen days following its issue, for a decision on the future of Martial Law. If the proclamation takes place during the period the National Assembly is dissolved, it is referred to the new Assembly at its first sitting.

(2) Martial Law may not continue unless a decision to that effect is made by a majority vote of the members constituting the Assembly.

(3) In all cases, the matter is referred to the National Assembly in accordance with the foregoing procedure, every three months.

**70. Treaties**

(1) The Amir concludes treaties by decree and transmits them immediately to the National Assembly with the appropriate statement. A treaty has the force of law after it is signed, ratified, and published in the Official Gazette.

(2) However, treaties of peace and alliance, treaties concerning the territory of the State, its natural resources or sovereign rights, or public or

private rights of citizens, treaties of commerce, navigation, and residence, and treaties entailing additional expenditure not provided for in the budget, or involving amendment of the laws of Kuwait, shall come into force only when made by a law

(3) In no case may treaties include secret provisions contradicting those declared

#### **71. Emergency Decrees**

(1) Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved, the Amir may issue decrees in respect thereof which have the force of law, provided that they are not contrary to the Constitution or to the appropriations included in the budget law

(2) Such decrees are referred to the National Assembly within the fifteen days following their issue if the Assembly is in session. If it is dissolved or its legislative term has expired, such decrees are referred to the next Assembly at its first sitting. If they are not thus referred, they retrospectively cease to have the force of law, without the necessity of any decision to that effect. If they are referred and the Assembly does not confirm them, they retrospectively cease to have the force of law, unless the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom

#### **72. Execution of Laws**

The Amir issues, by decree, the regulations necessary for the execution of laws without amending or suspending such laws or making any exemption from their execution. A law may prescribe a less formal instrument than a decree for the issue of the regulations necessary for its execution

#### **73. Regulations**

The Amir issues, by decree, regulations for public order and health, and regulations necessary for the organization of public services and administration, not conflicting with any law

#### **74. Diplomacy**

(1) The Amir appoints and dismisses civil and military officials and diplomatic representatives to foreign countries in accordance with the law

(2) He also accepts credentials of the representatives of foreign countries

#### **75. Pardon, Amnesty**

(1) The Amir may, by decree, grant a pardon or commute a sentence

(2) However, general amnesty shall not be granted except by a law and then only in respect of offences committed prior to the proposal of the amnesty

#### **76. Orders of Honor**

The Amir confers Orders of Honor in accordance with the law

**77. Minting Coins**

Coins are minted in the name of the Amir in accordance with the law

**78. Remuneration of the Amir**

Upon the accession of the Head of State, his annual emoluments are fixed by a law for the duration of his reign

### **CHAPTER III**

### **THE NATIONAL ASSEMBLY**

**79. Exclusive Legislation**

No law may be promulgated unless it has been passed by the National Assembly and sanctioned by the Amir

**80. Election, Ministerial Members**

(1) The National Assembly is composed of fifty members elected directly by universal suffrage and secret ballot in accordance with the provisions prescribed by the electoral law

(2) Ministers who are not elected members of the National Assembly are considered ex-officio members thereof

**81. Constituencies**

Electoral constituencies are determined by law

**82. Qualifications**

A member of the National Assembly shall

- (a) be a Kuwaiti by origin in accordance with law,
- (b) be qualified as an elector in accordance with the electoral law,
- (c) be not less than thirty calendar years of age on the day of election,
- (d) be able to read and write Arabic well

**83. Term, Re-election**

(1) The term of the National Assembly is four calendar years commencing with the day of its first sitting. Elections for the new Assembly take place within the sixty days preceding the expiry of the said term, due regard being given to the provisions of Article 107

(2) Members whose term of office expires may be re-elected

(3) The term of the Assembly may not be extended except for necessity in time of war and by a law

**84. Vacancy**

(1) If, for any reason, a seat in the National Assembly becomes vacant before the end of the term, the vacancy is filled by election within two months from the date on which the Assembly declares the vacancy. The mandate of the new member lasts until the end of that of his predecessor

(2) If the vacancy occurs within six months prior to the expiry of the legislative term of the Assembly, no successor is elected

**85. Annual Ordinary Session**

The National Assembly has an annual session of not less than eight months. The said session may not be prorogued before the budget is approved.

**86. Start of Ordinary Session**

The Assembly starts its ordinary session during the month of October of every year upon a convocation by the Amir. If the decree of convocation is not issued before the first of the said month, the time for the meeting is deemed to be 9 a.m. on the third Saturday of that month. If such day happens to be an official holiday, the Assembly meets on the morning of the first day thereafter.

**87. First Session**

(1) Notwithstanding the provisions of the preceding two Articles, the Amir summons the National Assembly to hold its first meeting within two weeks of the end of the general election. If the decree of convocation is not issued within the said period, the Assembly is deemed to have been convoked for the morning of the day following these two weeks, due regard being given to the relevant provision of the preceding Article.

(2) If the date of the meeting of the Assembly falls after the annual date mentioned in Article 86, the term of the session specified in Article 85 is reduced by the difference between the said two dates.

**88. Extraordinary Sessions**

(1) The National Assembly is called by decree to an extraordinary session if the Amir deems it necessary, or upon the demand of the majority of the members of the Assembly.

(2) In an extraordinary session, the Assembly may not consider matters other than those for which it has been convened except with the consent of the Cabinet.

**89. Prorogation of Sessions**

The Amir announces the prorogation of ordinary and extraordinary sessions.

**90. Place of Meeting**

Every meeting held by the Assembly at a time or place other than that assigned for its meeting is invalid, and resolutions passed thereat are void by virtue of law.

**91. Oath of Members**

Before assuming his duties in the Assembly or in its committees, a member of the National Assembly must take the following oath before the Assembly in a public sitting:

"I swear by Almighty God to be faithful to the Country and to the Amir, to respect the Constitution and the laws of the State, to defend the liberties, interests, and properties of the people, and to discharge my duties honestly and truthfully."

**92. President of Assembly**

(1) The National Assembly elects at its first sitting and for the duration of its term a President and a Deputy President from amongst its members. If either office becomes vacant, the Assembly elects a successor for the remainder of its term.

(2) In all cases, election is by an absolute majority vote of the members present. If this majority vote is not attained in the first ballot, another election is held between the two candidates receiving the highest number of votes. If more than one candidate receives an equal number of votes in the second place, all such candidates shall participate in the second ballot. In this case, the candidate who receives the greatest number of votes is elected. If there is a tie in this last ballot, the choice is by lot.

(3) The oldest member presides over the first sitting until the President is elected.

**93. Committees**

The Assembly forms, within the first week of its annual session, the committees necessary for its functions. These committees may discharge their duties during the recess of the Assembly with a view to submitting their recommendations to it when it meets.

**94. Publicity**

Sittings of the National Assembly are public, though they may be held in secret upon the request of the Government, the President of the Assembly, or of ten of its members. The debate on such request is held in secret.

**95. Validation of Election**

The National Assembly decides upon the validity of the election of its members. No election may be declared invalid except by a majority vote of the members constituting the Assembly. This jurisdiction may, by law, be entrusted to a judicial body.

**96. Resignation of Members**

The National Assembly is the competent authority to accept resignation of its members.

**97. Quorum, Majority**

For a meeting of the National Assembly to be valid, more than half of its members must be present. Resolutions are passed by an absolute majority vote of the members present, except in cases where a special majority is required. When votes are equally divided, the motion is rejected.

**98. Government Program**

Immediately upon its formation, every Cabinet presents its program to the National Assembly. The Assembly may make comments with regard to such a program.

**99. Questioning Government**

Every member of the National Assembly may put to the Prime Minister and to Ministers questions with a view to clarifying matters falling within their competence. The questioner alone has the right to comment once upon the answer.

**100. Interpellations**

(1) Every member of the National Assembly may address to the Prime Minister and to Ministers interpellations with regard to matters falling within their competence.

(2) The debate on such an interpellation shall not take place until at least eight days have elapsed after its presentation, except in case of urgency and with the consent of the Minister concerned.

(3) Subject to the provisions of Articles 101 and 102, an interpellation may lead to the question of no-confidence being put to the Assembly.

**101. Vote of No-confidence**

(1) Every Minister is responsible to the National Assembly for the affairs of his Ministry. If the Assembly passes a vote of no-confidence against a Minister, he is considered to have resigned his office as from the date of the vote of no-confidence and shall immediately submit his formal resignation. The question of confidence in a Minister may not be raised except upon his request or upon a demand signed by ten members, following a debate on an interpellation addressed to him. The Assembly may not make its decision upon such a request before the lapse of seven days from the presentation thereof.

(2) Withdrawal of confidence from a Minister is by a majority vote of the members constituting the Assembly excluding Ministers. Ministers do not participate in the vote of confidence.

**102. No-confidence in Prime Minister**

(1) The Prime Minister does not hold any portfolio, nor shall the question of confidence in him be raised before the National Assembly.

(2) Nevertheless, if the National Assembly decides, in the manner specified in the preceding Article, that it cannot co-operate with the Prime Minister, the matter is submitted to the Head of State. In such a case, the Amir may either relieve the Prime Minister of office and appoint a new Cabinet or dissolve the National Assembly.

(3) In the event of dissolution, if the new Assembly decides by the abovementioned majority vote that it cannot co-operate with the said Prime Minister, he shall be considered to have resigned as from the date of the decision of the Assembly in this respect, and a new Cabinet shall be formed.

**103. Continuation of Government**

If, for any reason, the Prime Minister or a Minister vacates his office, he shall continue to discharge the urgent business thereof until his successor is appointed.

**104. Amiri Speech**

(1) The Amir opens the annual session of the National Assembly whereupon he delivers an Amiri Speech reviewing the situation of the country and the important public matters which happened during the preceding year, and outlining the projects and reforms the Government plans to undertake during the coming year

(2) The Amir may depute the Prime Minister to open the Assembly or to deliver the Amiri Speech

**105. Response to Amiri Speech**

The National Assembly chooses, from amongst its members, a committee to draft the reply to the Amiri Speech which will embody the comments and wishes of the Assembly. After the said reply has been approved by the Assembly, it is submitted to the Amir

**106. Adjournment**

The Amir may, by a decree, adjourn the meeting of the National Assembly for a period not exceeding one month. Adjournment may be repeated during the same session with the consent of the Assembly and then only once. A period of adjournment is not counted in computing the duration of the session

**107. Dissolution**

(1) The Amir may dissolve the National Assembly by a decree in which the reasons for dissolution is indicated. However, dissolution of the Assembly may not be repeated for the same reasons

(2) In the event of dissolution, elections for the new Assembly are held within a period not exceeding two months from the date of dissolution

(3) If the elections are not held within the said period, the dissolved Assembly is restored to its full constitutional authority and meets immediately as if the dissolution had not taken place. The Assembly then continues to function until the new Assembly is elected

(4) A member of the Assembly represents the whole nation. He safeguards the public interest and is not subject to any authority in the discharge of his duties in the Assembly or in its committees

**108. { . }****109. Member Bills**

(1) A member of the Assembly has the right to initiate Bills

(2) No Bill initiated by a member and rejected by the National Assembly may be re-introduced during the same session

**110. Indemnity**

A member of the National Assembly is free to express any views or opinions in the Assembly or in its committees. Under no circumstances can he be held liable in respect thereof

**111. Immunity**

Except in cases of *flagrante delicto*, no measures of inquiry, search, arrest, detention, or any other penal measure may be taken against a member while the Assembly is in session, except with the authorisation of the Assembly. The Assembly must be notified of any penal measure that may be taken during its session in accordance with the foregoing provision. The Assembly, at its first meeting, is always notified of any such measure taken against any of its members while it was not sitting. In all cases, if the Assembly does not give a decision regarding a request for authorization within one month from the date of its receipt, permission is deemed to have been given.

**112. Assembly Discussions**

Upon a request signed by five members, any subject of general interest may be put to the National Assembly for discussion with a view to securing clarification of the Government's policy and to exchanging views thereof. All other members also have the right to participate in the discussion.

**113. Assembly Requests**

The National Assembly may express to the Government wishes regarding public matters. If the Government cannot comply with these wishes, it shall state to the Assembly the reasons therefore. The Assembly may comment once on the Government's statement.

**114. Committees of Inquiry**

The National Assembly at all times has the right to set up committees of inquiry or to delegate one or more of its members to investigate any matter within its competence. Ministers and all Government officials must produce testimonials, documents, and statements requested from them.

**115. Petition Committee**

(1) The Assembly sets up, among its annual Standing Committees, a Special Committee to deal with petitions and complaints submitted to the Assembly by citizens. The Committee seeks explanation thereon from the competent authorities and informs the person concerned of the result.

(2) A member of the National Assembly may not interfere with the work of either the Judicial or the Executive Power.

**116. Governmental Right to Speak**

The Prime Minister and Ministers are given the floor whenever they ask for it. They may call for assistance upon any senior officials or depute them to speak on their behalf. The Assembly may ask for a Minister to be present whenever a matter relating to his Ministry is under discussion. The Cabinet must be represented in the sittings of the Assembly by the Prime Minister or by some Ministers.

**117. Standing Orders, Duty to Presence**

The National Assembly determines its standing orders which include the procedure of the Assembly and its Committees and the rules pertaining to

discussion, voting, questions, interpellation, and all other functions prescribed in the Constitution. The standing orders prescribe the sanctions to be imposed on any member who violates order or absents himself from the meetings of the Assembly or the Committees without a legitimate excuse.

#### **118. Order in the Assembly, No Presence of Forces**

(1) Maintaining order in the National Assembly is the responsibility of its President. The Assembly has a special guard under the authority of the President of the Assembly.

(2) No armed forces may enter the Assembly or be stationed close to its gates unless so requested by the President.

#### **119. Remuneration**

The remuneration of the President of the National Assembly, the Deputy President, and the Members are fixed by law. In the event of a modification of the said remuneration, such modification may not take effect until the next legislative term.

#### **120. Incompatibilities**

(1) Membership of the National Assembly is incompatible with public office except in the cases where compatibility is permitted in accordance with the Constitution. In such cases, the right to the remuneration for membership and the right to the salary of the public office may not be cumulated.

(2) The law specifies other cases of incompatibility.

#### **121. Economic Incompatibility**

(1) During his mandate, a member of the National Assembly may not be appointed on the Board of Directors of a company, nor may he participate in concessions granted by the Government or by public bodies.

(2) Further, during the said mandate, he may not buy or rent any property of the State, nor let, sell, or barter any of his property to the Government, except by public auction or tender, or in compliance with the system of compulsory acquisition.

#### **122. No Decorations**

During their mandate, members of the National Assembly with the exception of those occupying a public office not incompatible with the membership of the National Assembly, may not be awarded decorations.

## **CHAPTER IV THE EXECUTIVE POWER**

### **Section I—The Cabinet**

#### **123. Council of Ministers**

The Council of Ministers has control over the departments of the State. It formulates the general policy of the Government, pursues its execution, and supervises the conduct of work in Government departments.

**124. Remuneration of Government**

(1) A law determines the remuneration of the Prime Minister and the Ministers

(2) All other provisions regarding Ministers apply to the Prime Minister unless otherwise stated

**125. Qualifications of Ministers**

A Minister has to satisfy the qualifications laid down in Article 82

**126. Oath of Ministers**

Before assuming office, the Prime Minister and Ministers, before the Amir, take the oath specified in Article 91

**127. Supervision by Prime Minister**

The Prime Minister presides over the meetings of the Council of Ministers and supervises the co-ordination of work among the various Ministries

**128. Secrecy, Quorum, Majority, Co-operation, Submission**

(1) Deliberations of the Council of Ministers are secret. Resolutions are passed only when the majority of its members are present and with the approval of the majority of those present. In case of an equal division of votes, that side prevails on which the Prime Minister has voted

(2) Unless they resign, the minority has to abide by the opinion of the majority

(3) Resolutions of the Council of Ministers are submitted to the Amir for approval in cases where the issue of a decree is required

**129. Government Follows Prime Minister**

The resignation of the Prime Minister or his removal from office involve the resignation or removal of all other Ministers

**130. Ministries, Directives**

Every Minister supervises the affairs of his Ministry and executes therein the general policy of the Government. He also formulates directives for the Ministry and supervises their execution

**131. Immunities of Ministers**

(1) While in office, a Minister may not hold any other public office or practice, even indirectly, any profession, or undertake any industrial, commercial, or financial business. Furthermore, he may not participate in any concession granted by the Government or by public bodies or cumulate the ministerial post with membership of the board of directors of any company.

(2) In addition, during the said period, a Minister may not buy or otherwise acquire any property of the State even by public auction, nor may he let, sell, or switch any of his property to the Government

**132. Ministerial Offences and Indictment**

A special law defines the offences which may be committed by Ministers in the performance of their duties, and specifies the procedure for their indictment and trial and the competent authority for the said trial, without affecting the application of other laws to their ordinary acts or offences and to the civil liability arising therefrom

**133 Self-Government**

The law regulates general and municipal self-governing bodies in such a way as to ensure their independence under the direction and supervision of the Government

**Section II—Financial Affairs****134. Establishing Taxes**

No general tax may be established, amended, or abolished except by a law No one may be exempted, wholly or partially, from the duty to pay such taxes except in the cases specified by law No one may be required to pay any other tax, fee, or imposition except within the limits of law

**135. Funds**

The law prescribes rules for the collection of public funds and the procedure for their expenditure

**136 Public Loans**

Public loans are concluded by a law The Government may grant or guarantee a loan by a law, or within the limits of the funds appropriated for the said purpose in the budget

**137 Loans of Self-Governing Bodies**

General and local self-governing bodies may grant or guarantee loans according to law

**138 State Properties**

The law lays down the rules for the protection of State properties, their administration, the conditions of their disposal, and the limits within which any of these properties may be relinquished

**139 Financial Year**

The financial year is fixed by law

**140 Annual Budget**

The Government draws up the annual budget, comprising the revenue and expenditure of the State, and submits it to the National Assembly for examination and approval at least two months before the end of each current financial year

**141 Budget Discussion, Purpose**

(1) The budget shall be discussed in the National Assembly part by part

(2) None of the public revenues may be allocated for a specific purpose except by law

#### **142. Specific Funds**

Specific funds may be appropriated by law for more than one year if the nature of the expenditure so requires, provided that each budget shall include the funds allocated for that year, or alternatively, an extraordinary budget covering more than one financial year shall be drawn up

#### **143. No Tax Inclusion**

The budget law may not include any provisions establishing a new tax, increasing an existing tax, amending an existing law, or evading the issue of a special law on a matter in respect of which the Constitution provides that a law should be issued

#### **144. Budget by Law**

The budget shall be issued by a law

#### **145. Continuing Budget**

(1) If the budget law has not been promulgated before the beginning of the financial year, the preceding budget applies until the new one is issued and revenues are collected and disbursements made in accordance with laws in force at the end of the preceding year

(2) However, if the National Assembly has approved one or more parts of the new budget, they are put into effect

#### **146. Changes of Budget**

Any expenditure not included in the budget, or in excess of the budget appropriations, as well as the transfer of any fund from one part of the budget to another, must be effected by law

#### **147. Maximum Expenditure**

In no case may the maximum estimate of expenditure, included in the budget law or the laws amending it, be exceeded

#### **148. General Budgets**

The general budgets, both independent and annexed, must be specified by law to which the provisions regarding the budget of the State apply

#### **149. Final Accounts**

The final accounts of the financial administration of the State for the preceding year are submitted, within four months following the end of the said year, to the National Assembly for consideration and approval

#### **150. Statement of Government**

The Government submits to the National Assembly, at least once during each ordinary session, a statement upon the financial position of the State

**151. Audit Commission**

A financial control and Audit Commission is established by a law, which ensures its independence. The Commission is attached to the National Assembly and assists the Government and the National Assembly in controlling the collection of the State revenues and the disbursement of its expenditures within the limits of the budget. The Commission submits to both the Government and the National Assembly an annual report on its activities and its observations.

**152. Natural Resources**

No concession for exploitation of either a natural resource or a public service may be granted except by a law and for a limited period. In this respect, the preparatory measures facilitate the operations of prospecting and exploring and ensure publicity and competition.

**153. Monopoly**

No monopoly may be granted except by a law and for a limited period.

**154. Currency, Banking, Standards**

Currency and banking as well as standards, weights, and measures are regulated by law.

**155. Pensions**

Law regulates salaries, pensions, compensation, subsidies, and gratuities which are a charge on the State treasury.

**156. Local Budgets**

Provisions relating to the budgets and the final accounts of local bodies and authorities which have a public legal personality are determined by law.

**Section III—Military Affairs****157. Peace, State Integrity**

Peace is the aim of the State, and the safeguard of the integrity of the Country, which is part of the integrity of the Greater Arab World, is a trust devolving upon every citizen.

**158. Military Service**

Military service is regulated by law.

**159. Establishment of Armed Forces**

The State alone may establish armed forces and public security bodies and that in accordance with law.

**160. Mobilization**

Mobilization, general or partial, are regulated by law.

**161. Supreme Defence Council**

A Supreme Defence Council is set up to conduct affairs relating to defence, to the safeguard of the integrity of the Country, and to the supervision of the armed forces, in accordance with law

## **CHAPTER V**

### **THE JUDICIAL POWER**

**162. Impartiality of Judges**

The honor of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties

**163. Independence of Judiciary**

In administering justice, Judges are not subject to any authority No interference whatsoever is allowed with the conduct of justice Law guarantees the independence of the Judiciary and states the guarantees and provisions relating to Judges and the conditions of their irremovability

**164. Court System, Military Courts**

Law regulates the courts of various kinds and degrees and specifies their functions and jurisdiction Except when Martial Law is in force, Military Courts have jurisdiction only over military offences committed by members of the armed and security forces within the limits specified by law

**165. Publicity of Trials**

Sittings of the courts are to be public, except for the cases prescribed otherwise by law

**166. Recourse to the Courts**

The right of recourse to the courts is guaranteed to all people Law prescribes the procedure and manner necessary for the exercise of this right

**167. Public Prosecution**

(1) The Public Prosecution Office conducts penal charges on behalf of society It supervises the affairs of judicial police, the enforcement of penal laws, the pursuit of offenders, and the execution of judgments Law regulates this body, lays down its duties, and defines the conditions and guarantees for those who assume its functions

(2) As an exception, law may entrust to the public security authorities the conduct of prosecutions in misdemeanours in accordance with the manner prescribed by law

**168. Supreme Council of Judiciary**

The Judiciary has a Supreme Council which is regulated, and its duties defined, by law

**169. Administrative Jurisdiction**

The law regulates the settlement of administrative suits by means of a special Chamber or Court, and prescribes its organization and the manner of

- assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law.

#### 170 Legal Departments

The law organizes the body which renders legal advice to ministries and public departments and drafts Bills and regulations. Law also regulates the representation of the State and other public bodies before the courts.

#### 171 Council of State

A Council of State may be established by a law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting Bills and regulations, mentioned in the preceding two Articles.

#### 172 Conflicts of Jurisdiction

The method of resolving conflicts of jurisdiction or of judgments between the various kinds of courts are prescribed by law.

#### 173 Constitutional Review

(1) The law specifies the judicial body competent to deciding disputes relating to the constitutionality of laws and regulations and determines its jurisdiction and procedure.

(2) The law ensures the right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body.

(3) If the said body decides that a law or a regulation is unconstitutional, it is considered null and void.

### PART V

## GENERAL AND TRANSITIONAL PROVISIONS

#### 174 Amendments of the Constitution

(1) The Amir or one-third of the members of the National Assembly have the right to propose a revision of the Constitution by amending or deleting one or more of its provisions or by adding new provisions.

(2) If the Amir and the majority of the members constituting the National Assembly approve the principle of revision and its subject matter, the Assembly debates the Bill Article by Article. Approval by a two-thirds majority vote of the members constituting the Assembly is required for the Bill to be passed. The revision comes into force only after being sanctioned and promulgated by the Amir regardless of the provisions of Articles 65 and 66.

(3) If the principle of revision or its subject matter is rejected, it may not be presented again before the lapse of one year from the rejection.

(4) No amendment to this Constitution may be proposed before the lapse of five years from its coming into force.

#### 175. Limits to Constitutional Amendments

The provisions relating to the Amir System in Kuwait and the principles of liberty and equality, provided for in this Constitution, may not be proposed

for revision except in relation to the title of the Amirate or to increase the guarantees of liberty and equality

#### **176. Powers of the Amir**

The powers of the Amir, specified in this Constitution, may not be proposed for revision when a Deputy Amir is acting for him

#### **177. Continuation of Treaties**

The application of this Constitution does not affect treaties and conventions previously concluded by Kuwait with other States and international organizations

#### **178. Publication of Laws**

Laws are published in the Official Gazette within two weeks of their promulgation and come into force one month after their publication. The latter period may be extended or reduced for any law by a special provision included in it

#### **179. Retroactive Laws**

The laws are applicable to that which takes place after the date of their coming into force, and thus have no effect in respect of what has taken place before such date. However, in other than penal matters, a law may, with the approval of a majority vote of the members constituting the National Assembly, prescribe otherwise

#### **180. Continuation of Laws**

All provisions of laws, regulations, decrees, orders, and decisions, in effect upon the coming into force of this Constitution, continue to be applicable unless amended or repealed in accordance with the procedure prescribed in this Constitution, provided that they are not contrary to any of its provisions

#### **181. No Suspension of Constitution**

No provision of this Constitution may be suspended except when Martial Law is in force and within the limits specified by the law. Under no circumstances may the meetings of the National Assembly be suspended, nor shall the immunities of its members be interfered with during such period

#### **182. Publication, Enforcement**

This Constitution shall be published in the Official Gazette and comes into force on the date of the meeting of the National Assembly which shall not be later than January 1963

#### **183. Continuing Assembly**

Law Number I of 1962 concerning the system of Government during the period of transition continues to be in force, and the present members of the Constituent Assembly continue in the exercise of their duties specified in the said law, until the meeting of the National Assembly

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## CONSTITUTION OF REPUBLIC OF NAMIBIA

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{Adopted on Feb 1990}

### PREAMBLE

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace,

Whereas the said rights include the right of the individual to life, liberty and the pursuit of happiness, regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status,

Whereas the said rights are most effectively maintained and protected in a democratic society, where the Government is responsible to freely elected representatives of the people, operating under a sovereign Constitution and a free and independent judiciary,

Whereas these rights have for so long been denied to the people of Namibia by colonialism, racism and apartheid,

Whereas we the people of Namibia—have finally emerged victorious in our struggle against colonialism, racism and apartheid, are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle, desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world, will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state, committed to these principles, have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality, and fraternity

Now therefore, we the people of Namibia accept and adopt this Constitution as the fundamental law of our Sovereign and Independent Republic

## **CHAPTER I**

### **THE REPUBLIC**

#### **1. Establishment of the Republic of Namibia and Identification of its Territory**

(1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all

(2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State

(3) The main organs of the State shall be the Executive, the Legislature and the Judiciary

(4) The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and its southern boundary shall extend to the middle of the Orange River

(5) Windhoek shall be the seat of Central Government

(6) This Constitution shall be the Supreme Law of Namibia

#### **2. National Symbols**

(1) Namibia shall have a National Flag, the description of which is set out in Schedule 6

(2) Namibia shall have a National Coat of Arms, a National Anthem and a National Seal to be determined by Act of Parliament, which shall require a two-thirds majority of all the members of the National Assembly for adoption and amendment

(3)(a) The National Seal of the Republic of Namibia shall show the Coat of Arms circumscribed with the word "NAMIBIA" and the motto of the country, which shall be determined by Act of Parliament as aforesaid

(b) The National Seal shall be in the custody of the President or such person whom the President may designate for such purpose and shall be used on such official documents as the President may determine

#### **3. Language**

(1) The official language of Namibia shall be English

(2) Nothing contained in this Constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools financed or subsidised by the State, subject to compliance with such requirements as may be imposed by law, to ensure proficiency in the official language, or for pedagogic reasons

- (3) Nothing contained in Paragraph (1) shall preclude legislation by Parliament which permits the use of a language other than English for legislative, administrative and judicial purposes in regions or areas where such other language or languages are spoken by a substantial component of the population

## CHAPTER II CITIZENSHIP

### 4. Acquisition and loss of Citizenship

(1) The following persons shall be citizens of Namibia by birth

a) those born in Namibia before the date of Independence whose fathers or mothers would have been Namibian citizens at the time of the birth of such persons, if this Constitution had been in force at that time, and

b) those born in Namibia before the date of Independence, who are not Namibian citizens under paragraph (a), and whose fathers or mothers were ordinarily resident in Namibia at the time of the birth of such persons provided that their fathers or mothers were not then persons

aa) who were enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges, or

bb) who were career representatives of another country, or

cc) who were members of any police, military or security unit seconded for service within Namibia by the Government of another country provided further that this paragraph shall not apply to persons claiming citizenship of Namibia by birth if such persons were ordinarily resident in Namibia at the date of Independence and had been so resident for a continuous period of not less than five years prior to such date, or if the fathers or mothers of such persons claiming citizenship were ordinarily resident in Namibia at the date of the birth of such persons and had been so resident for a continuous period of not less than five years prior to such date,

c) those born in Namibia after the date of Independence whose fathers or mothers are Namibian citizens at the time of the birth of such persons,

d) those born in Namibia after the date of Independence who do not qualify for citizenship under paragraph c, and whose fathers or mothers are ordinarily resident in Namibia at the time of the birth of such persons provided that their fathers or mothers are not then persons

aa) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or

bb) who are career representatives of another country, or

cc) who are members of any police, military or security unit seconded for service within Namibia by the Government of another country, or

dd) who are illegal immigrants provided further that paragraphs (aa), (bb), (cc) and (dd) will not apply to children who would otherwise be stateless

(2) The following persons shall be citizens of Namibia by descent

a) those who are not Namibian citizens under paragraph (1) and whose fathers or mothers at the time of the birth of such persons are citizens of Namibia or whose fathers or mothers would have qualified for Namibian citizenship by birth under paragraph (1), if this Constitution had been in force at that time, and

b) who comply with such requirements as to registration of citizenship as may be required by Act of Parliament provided that nothing in this Constitution shall preclude Parliament from enacting legislation which requires the birth of such persons born after the date of Independence to be registered within a specific time either in Namibia or at an embassy, consulate or office of a trade representative of the Government of Namibia

(3) The following persons shall be citizens of Namibia by marriage

a) those who are not Namibian citizens under paragraph (1) or (2) and who

aa) in good marry a Namibian citizen or, prior to the coming into force of this Constitution, in good faith married a person who would have qualified for Namibian citizenship if this Constitution had been in force, and

bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person for a period of not less than two years, and

cc) apply to become citizens of Namibia,

b) for the purposes of this paragraph (and without derogating from any effect that it may have for any other purposes) a marriage by customary law shall be deemed to be a marriage provided that nothing in this Constitution shall preclude Parliament from enacting legislation which defines the requirements which need to be satisfied for a marriage by customary law to be recognised as such for the purposes of this paragraph

(4) Citizenship by registration may be claimed by persons who are not Namibian citizens under paragraph (1), (2) or (3) and who were ordinarily resident in Namibia at the date of Independence, and had been so resident for a continuous period of not less than five years prior to such date provided that application for Namibian citizenship under this paragraph is made within a period of twelve months from the date of Independence, and prior to making such application, such persons renounce the citizenship of any other country of which they are citizens

(5) Citizenship by naturalisation may be applied for by persons who are not Namibian citizens under paragraphs (1), (2), (3) or (4) and who

a) are ordinarily resident in Namibia at the time when the application for naturalisation is made, and

b) have been so resident in Namibia for a continuous period of not less than five years (whether before or after the date of Independence), and

c) satisfy any other criteria pertaining to health, morality, security or legality of residence as may be prescribed by law

(6) Nothing contained herein shall preclude Parliament from authorizing by law the conferment of Namibian citizenship upon any fit and proper person by virtue of any special skill or experience or commitment to or services rendered to the Namibian nation either before or at any time after the date of Independence

(7) Namibian citizenship shall be lost by persons who renounce their Namibian citizenship by voluntarily signing a formal declaration to that effect

(8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of Independence

a) have acquired the citizenship of any other country by any voluntary act, or

b) have served or volunteered to serve in the armed or security forces of any other country without the written permission of the Namibian Government, or

c) have taken up permanent residence in any other country and have absented themselves thereafter from Namibia for a period in excess of two years without the written permission of the Namibian Government provided that no person who is a citizenship of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation

(9) Parliament shall be entitled to make further laws not inconsistent with this Constitution regulating the acquisition or loss of Namibian citizenship

### CHAPTER III

## FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

### 5. Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the courts in the manner hereinafter prescribed

**6. Protection of Life**

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

**7. Protection and Liberty**

No persons shall be deprived of personal liberty except according to procedures established by law.

**8. Respect for Human Dignity**

(1) The dignity of all persons shall be inviolable.

(2)(a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

**9. Slavery and Forced Labour**

(1) No persons shall be held in slavery or servitude.

(2) No persons shall be required to perform forced labour.

(3) For the purposes of this article, the expression "forced labour" shall not include

a) any labour required in consequence of a sentence or order of a court,

b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene,

c) any labour required of members of the defence force, the police force and the prison service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service,

d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation,

e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

**10. Equality and Freedom from Discrimination**

(1) All persons shall be equal before the law.

(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

**Art. 11. Arrest and Detention**

- (1) No persons shall be subject to arbitrary arrest or detention
- (2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for their arrest
- (3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer
- (4) Nothing contained in paragraph (3) shall apply to illegal immigrants held in custody under any law dealing with illegal immigration, provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority
- (5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety

**12. Fair Trial**

- (1)(a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent court or Tribunal established by law provided that such court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society
- (b) A trial referred to in paragraph (a) shall take place within a reasonable time, failing which the accused shall be released
- (c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require
- (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them
- (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice
- (f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no court shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8 (2)(b)

(2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law: provided that nothing in this paragraph shall be construed as changing the provisions of the common law defence of "previous acquittal" and "previous conviction".

(3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

### 13. Privacy

(1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety of the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others

(2) Searches of the person or the homes of individuals shall only be justified:

a) where these are authorised by a competent judicial officer;

b) in cases where delay in obtaining such judicial authority carries with it the danger or prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied.

### 14. Family

(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### 15. Children's Rights

(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.

(2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral, or social development. For the purposes of this paragraph children shall be under the age of sixteen years

(3) No children under the age of fourteen years shall be employed to work in any factory or mine, save under conditions and circumstances

regulated by Act of Parliament Nothing in this paragraph shall be construed as derogating in any way from paragraph (2)

(4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 be deemed to constitute an arrangement or scheme to compel the performance of forced labour

(5) No law authorising preventive detention shall permit children under the age of sixteen years to be detained

#### 16. Property

(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens

(2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament

#### 17. { . }

#### 18 Administrative Justice

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or Tribunal

#### 19 Culture

Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this article do not impinge upon the rights of others or the national interest

#### 20. Education

(1) All persons shall have the right to education

(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge

(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen years, whichever is the sooner, save in so far as this may be authorised by Act of

Parliament on grounds of health or other considerations pertaining to the public interest

(4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education provided that.

a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration,

b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State,

c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed,

d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour

## **21. Fundamental Freedoms**

(1) All persons shall have the right to

a) freedom of speech and expression, which shall include freedom of the press and other media,

b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning,

c) freedom to practice any religion and to manifest such practice,

d) assemble peaceably and without arms,

e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties,

f) withhold their labour without being exposed to criminal penalties,

g) move freely throughout Namibia,

h) reside and settle in any part of Namibia,

i) leave and return to Namibia,

j) practice any profession, or carry on any occupation, trade or business

(2) The fundamental freedoms referred to in paragraph (1) shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said paragraph, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence

## **22. Limitation upon Fundamental Rights and Freedoms**

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall

a) be of general application, shall not negate the essential content, and shall not be aimed at a particular individual,

b) specify the ascertainable extent of such limitation and identify the article or articles on which authority to enact such limitation is claimed to rest.

### 23. Apartheid and Affirmative Action

(1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices

(2) Nothing contained in Article 10 shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force, and the prison service

(3) In the enactment of legislation and the application of any policies and practices contemplated by paragraph (2), it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation

### 24 Derogation

(1) Nothing contained in or done under the authority of Article 26 shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force

(2) Where any persons are detained by virtue of such authorization as is referred to in paragraph (1), the following provisions shall apply:

a) they shall, as soon as reasonably practicable and in any case not more than five days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them;

b) not more than fourteen days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them,

c) not more than one month after the commencement of their detention and thereafter during their detention at intervals of not more than three months, their cases shall be reviewed by the Advisory Board referred to in Article 26 (5)(c), which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons,

d) they shall be afforded such opportunity for the making of representations as may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons

(3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21 (1)(a), (b), (c), and (e), or the denial of access by any persons to legal practitioners or a court of law

## **25. Enforcement of Fundamental Rights and Freedoms**

(1) Save in so far as it may be authorised to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid, provided that

a) a competent court, instead of declaring such law or action to be invalid, shall have the power and the discretion in an appropriate case to allow Parliament, any subordinate legislative authority, or the Executive and the agencies of Government, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it. In such event and until such correction, or until the expiry of the time limit set by the court, whichever be the shorter, such impugned law or action shall be deemed to be valid,

b) any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional, it may either set aside the law, or allow Parliament to correct any defect in such law, in which event the provisions of paragraph (a) shall apply

(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient

(3) Subject to the provisions of this Constitution, the court referred to in paragraph (2) shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the

rights of freedoms conferred on them under the provisions of this Constitution, should the court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict

(4) The power of the court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases

#### CHAPTER IV

### PUBLIC EMERGENCY, STATE OF NATIONAL DEFENCE AND MARTIAL LAW

#### 26 State of Emergency, State of National Defence and Martial Law

(1) At a time of national disaster or during a state of national defence or public emergency threatening the life of the nation or the constitutional order, the President may by Proclamation in the Gazette declare that a state of emergency exists in Namibia or any part thereof

(2) A declaration under paragraph (1), if not sooner revoked, shall cease to have effect

a) in the case of a declaration made when the National Assembly is sitting or has been summoned to meet, at the expiration of a period of seven (7) days after publication of the declaration, or

b) in any other case, at the expiration of a period of thirty days after publication of the declaration, unless before the expiration of that period, it is approved by a resolution passed by the National Assembly by a two-thirds majority of all its members

(3) Subject to the provisions of paragraph (4), a declaration approved by a resolution of the National Assembly under paragraph (2) shall continue to be in force until the expiration of a period of six months after being so approved or until such earlier date as may be specified in the resolution provided that the National Assembly may, by resolution by a two-thirds majority of all its members, extend its approval of the declaration for periods of not more than six months at a time

(4) The National Assembly may by resolution at any time revoke a declaration approved by it in terms of this Article

(5)(a) During a state of emergency in terms of this Article or when a state of national defence prevails, the President shall have the power by Proclamation to make such regulations as in his or her opinion are necessary for the protection of national security, public safety and the maintenance of law and order

(b) The powers of the President to make such regulations shall include the power to suspend the operation of any rule of the common

law or statute or any fundamental right or freedom protected by this Constitution, for such period and subject to such conditions as are reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency provided that nothing in this paragraph shall enable the President to act contrary to the provisions of Article 24

(c) Where any regulation made under paragraph (b) provides for detention without trial, provision shall also be made for an Advisory Board, to be appointed by the President on the recommendation of the Judicial Service Commission and consisting of no more than five persons, of whom no fewer than three persons shall be Judges of the Supreme Court or the High Court or qualified to be such. The Advisory Board shall perform the function set out in Article 24 (2)(c)

(6) Any regulations made by the President pursuant to the provisions of paragraph (5) shall cease to have legal force if they have not been approved by a resolution of the National Assembly within fourteen days from the date when the National Assembly first sits in session after the date of the commencement of any such regulations

(7) The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-third majority of all the members of the National Assembly

## CHAPTER V THE PRESIDENT

### 27. Head of State and Government

(1) The President shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force

(2) The executive power of the Republic of Namibia shall vest in the President and the Cabinet

(3) Except as may be otherwise provided in this Constitution or by law, the President shall in the exercise of her functions be obliged to act in consultation with the Cabinet

### 28. Election

(1) The President shall be elected in accordance with the provisions of this Constitution and subject thereto

(2) Election of the President shall be

a) by direct, universal and equal suffrage, and

b) conducted in accordance with principles and procedures to be determined by Act of Parliament provided that no person shall be elected as President unless he or she received more than fifty per cent of the votes cast and the necessary number of ballots shall be conducted until result is reached

(3) Every citizen of Namibia by birth or descent, over the age of thirty-five years, and who is eligible to be elected to office as a member of the National Assembly shall be eligible for election as President

(4) The procedures to be followed for the nomination of candidates for election as President, and for all matters necessary and incidental to ensure the free, fair and effective election of a President, shall be determined by Act of Parliament provided that any registered political party shall be entitled to nominate a candidate, and any person supported by a minimum number of registered voters to be determined by Act of Parliament shall also be entitled to be nominated as a candidate

#### 29. Term of Office

(1)(a) The President's term of office shall be five years unless he or she dies or resigns before the expiry of the said term or is removed from office

(b) In the event of the dissolution of the National Assembly in the circumstances provided for under Article 57 (1), the President's term of office shall also expire

(2) A President shall be removed from office if a two-thirds majority of all the members of the National Assembly, confirmed by a two-thirds majority of all the members of the National Council, adopts a resolution impeaching the President on the ground that he or she has been guilty of a violation of the Constitution or guilty of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of President

(3) A person shall hold office as President for not more than two terms

(4) If a President dies, resigns or is removed from office in terms of this Constitution, the vacant office of President shall be filled for the unexpired period thereof as follows

a) if the vacancy occurs not more than one year before the date on which Presidential elections are required to be held, the vacancy shall be filled in accordance with the provisions of Article 34,

b) if the vacancy occurs not more than one year before the date on which Presidential elections are required to be held, an election for the President shall be held in accordance with the provisions of 28 within a period of ninety (90) days from the date on which the vacancy occurred, and pending such election the vacant office shall be filled in accordance with the provisions of Article 34

(5) If the President dissolves the National Assembly under Articles 32 (3)(a) and 57 (1), a new election for President shall be held in accordance with the provisions of Article 28 within ninety days, and pending such election the President shall remain in office, and the provisions of Article 58 shall be applicable

(6) If a person becomes President under paragraph (4), the period of time during which he or she holds office consequent upon such election or succession shall not be regarded as a term for the purposes of paragraph (3)

### 30. Oath or Affirmation

Before formally assuming office, a President-elect shall make the following oath or affirmation which shall be administered by the Chief Justice or a Judge designated by the Chief Justice for this purpose

"I, , do hereby swear/solemnly affirm,

That I will strive to the best of my ability to uphold, protect and defend as the Supreme Law the Constitution of the Republic of Namibia, and faithfully to obey, execute and administer the laws of the Republic of Namibia,

That I will protect the independence, sovereignty, territorial integrity and the material and spiritual resources of the Republic of Namibia, and

That I will endeavour to the best of my ability to ensure justice for all the inhabitants of the Republic of Namibia

(In the case of an oath ) So help me God "

### 31. Immunity from Civil and Criminal Proceedings

(1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings save where such proceedings concern an act done in his or her official capacity as President

(2) No person holding the office of President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as President

(3) After a President has vacated that office

a) no court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President,

b) a civil or criminal court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as President, if Parliament by resolution has removed the President on the grounds specified in this Constitution and if a resolution is adopted by Parliament resolving that any such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of President

### 32. Functions, Powers and Duties

(1) As the Head of State, the President shall uphold, protect and defend the Constitution as the Supreme Law, and shall perform with dignity and leadership all acts necessary, expedient, reasonably and incidental to the discharge of the executive functions of the Government, subject to the overriding terms of this Constitution and the laws of Namibia, which he or she is constitutionally obliged to protect, to administer and to execute

(2) In accordance with the responsibility of the executive branch of Government to the legislative branch, the President and the Cabinet shall each year during the consideration of the official budget attend Parliament. During such session the President shall address Parliament on the state of the nation and on the future policies of the Government, shall report on the policies of the previous year and shall be available to respond to questions.

(3) Without derogating from the generality of the functions and powers contemplated by paragraph (1), the President shall preside over meetings of the Cabinet and shall have the power, subject to this Constitution to

a) dissolve the National Assembly by Proclamation in the circumstances provided for in Article 57 (1),

b) determine the times for the holding of special sessions of the National Assembly, and to prorogue such sessions,

c) accredit, receive and recognise Ambassadors, and to appoint Ambassadors, Plenipotentiaries, diplomatic representatives and other diplomatic officers, Consuls and Consular Officers,

d) pardon or reprieve offenders, either unconditionally or subject to such conditions as the President may deem fit,

e) negotiate and sign international agreements, and to delegate such power,

f) declare martial law or, if it is necessary for the defence of the nation, declare that a state of national defence exists provided that this power shall be exercised subject to the terms of Article 26 (7),

g) establish and dissolve such Government departments and ministries as the President may at any time consider to be necessary or expedient for the good Government of Namibia,

h) confer such honours as the President considers appropriate on citizens, residents and friends of Namibia in consultation with interested and relevant persons and institutions,

i) appoint the following persons

(aa) the Prime Minister,

(bb) Ministers and Deputy Ministers,

(cc) the Attorney-General,

(dd) the Director-General of Planning,

(ee) any other person or persons who are required by any other provision of this Constitution or any other law to be appointed by the President

(4) The President shall also have the power, subject to this Constitution, to appoint

a) on the recommendation of the Judicial Service Commission

(aa) the Chief Justice, the Judge-President of the High Court and other Judges of the Supreme Court and the High Court,

(bb) the Ombudsman,

- (cc) the Prosecutor-General,
- b) on the recommendation of the Public Service Commission
  - (aa) the Auditor-General,
  - (bb) the Governor and the Deputy Governor of the Central Bank,
- c) on the recommendation of the Security Commission
  - (aa) the Chief of the Defence Force,
  - (bb) the Inspector-General of Police,
  - (cc) the Commissioner of Prisons

(5) Subject to the provisions of this Constitution dealing with the signing of any laws passed by Parliament and the promulgation and publication of such laws in the Gazette, the President shall have the power to

- a) sign and promulgate any Proclamation which by law he or she is entitled to proclaim as President,
- b) initiate, in so far as he or she considers it necessary and expedient, laws for submission to and consideration by the National Assembly,
- c) appoint as members of the National Assembly but without any vote therein, not more than six persons by virtue of their special expertise, status, skill or experience

(6) Subject to the provisions of this Constitution or any other law, any person appointed by the President pursuant to the powers vested in him or her by this Constitution or any other law may be removed by the President by the same process through which such person was appointed

(7) Subject to the provisions of this Constitution and of any other law of application in this matter, the President may, in consultation with the Cabinet and on the recommendation of the Public Service Commission

- a) constitute any office in the public service of Namibia not otherwise provided for by any other law,
- b) appoint any person to such office,
- c) determine the tenure of any person so appointed as well as the terms and conditions of his or her service

(8) All appointments made and actions taken under paragraph (3), (4), (5), (6) and (7) shall be announced by the President by Proclamation in the Gazette

(9) Subject to the provisions of this Constitution and save where this Constitution otherwise provides, any action taken by the President pursuant to any power vested in the President by the terms of this shall be capable of being reviewed, reversed or corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least one-third of all the members of the National Assembly and passed by a two-thirds majority of all the members of the National Assembly disapproving any such action and resolving to review, reverse or correct it

(10) Notwithstanding the review, reversal or correction of any action in terms of paragraph (9), all actions performed pursuant to any such action during the period preceding such review, reversal or correction shall be deemed to be valid and effective in law, until and unless Parliament otherwise enacts

### 33. Remuneration

Provision shall be made by Act of Parliament for the payment out of the State Revenue Fund of remuneration and allowances for the President, as well as for the payment of pensions to former Presidents and, in the case of their deaths, to their surviving spouses

### 34. Succession

(1) If the office of President becomes vacant or if the President is otherwise unable to fulfil the duties of the office, the following persons shall in the order provided for in this paragraph act as President for the unexpired portion of the President's term of office or until the President is able to resume office, whichever is the earlier

- a) the Prime Minister,
- b) the Deputy Prime Minister,
- c) a person appointed by the Cabinet

(2) Where it is regarded as necessary or expedient that a person deputes for the President because of a temporary absence from the country or because of pressure of work, the President shall be entitled to nominate any person enumerated in paragraph (1) to deputes for him or her in respect of such specific occasions or such specific matters and for such specific periods as in his or her discretion may be considered wise and expedient, subject to consultation with the Cabinet

## CHAPTER VI THE CABINET

### 35. Composition

(1) The Cabinet shall consist of the President, the Prime Minister and such other Ministers as the President may appoint from the members of the National Assembly, including members nominated under Article 46 (1)(b), for the purposes of administering and executing the functions of the Government

(2) The President may also appoint a Deputy Prime Minister to perform such functions as may be assigned to him or her by the President of the Prime Minister

(3) The President or, in his or her absence, the Prime Minister or other Minister designated for this purpose by the President, shall preside at meetings of the Cabinet

**36 Functions of the Prime Minister**

The Prime Minister shall be the leader of Government business in Parliament, shall co-ordinate the work of the Cabinet and shall advise and assist the President in the execution of the functions of Government

**37. Deputy Ministers**

The President may appoint from the members of the National Assembly, including members nominated under Article 46 (1)(b), and the National Council such Deputy Ministers as he or she may consider expedient, to exercise or perform on behalf of Ministers any of the powers, functions and duties which may have been assigned to such Ministers

**38. Oath of Affirmation**

Before assuming office, a Minister or Deputy Minister shall make and subscribe to an oath or solemn affirmation before the President or a person designated by the President for this purpose, in the terms set out in Schedule 2

**39. Vote of No-confidence**

The President shall be obliged to terminate the appointment of any member of the Cabinet, if the National Assembly by a majority of all its members resolves that it has no-confidence in that member

**40. Duties and Functions**

The members of the Cabinet shall have the following functions

a) to direct, co-ordinate and supervise the activities of Ministries and Government departments including para-statal enterprises, and to review and advise the President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such para-statal enterprises, regard being had to the public interest,

b) to initiate bills for submission to the National Assembly,

c) to formulate, explain and assess for the National Assembly the budget of the State and its economic development plans and to report to the National Assembly thereon,

d) to carry out such other functions as are assigned to them by law or are incidental to such assignment,

e) to attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, effectiveness and direction of Government policies,

f) to take such steps as are authorised by law to establish such economic organisations, institutions and para-statal enterprises on behalf of the State as are directed or authorised by law,

g) to formulate, explain and analyze for the members of the National Assembly the goals of Namibian foreign policy and its relations with other States and to report to the National Assembly thereon,

h) to formulate, explain and analyze for the members of the National Assembly the directions and content of foreign trade policy and to report to the National Assembly thereon,

i) to assist the President in determining what international agreements are to be concluded, acceded to or succeeded to and to report to the National Assembly thereon,

j) to advise the President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon,

k) to issue notices, instructions and directives to facilitate the implementation and administration of laws administered by the Executive, subject to the terms of this Constitution or any other law,

l) to remain vigilant and vigorous for the purposes of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies

#### 41. Ministerial Accountability

All Ministers shall be accountable individually for the administration of their own Ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament

#### 42 Outside Employment

(1) During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with the positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests

(2) No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves

#### 43 Secretary to the Cabinet

(1) There shall be a Secretary to the Cabinet who shall be appointed by the President and who shall perform such functions as may be determined by law and such functions as are from time to time assigned to the Secretary by the President or the Prime Minister. Upon appointment by the President, the Secretary shall be deemed to have been appointed to such office on the recommendation of the Public Service Commission

(2) The Secretary to the Cabinet shall also serve as a depository of the records, minutes and related documents of the Cabinet

## CHAPTER VII

### THE NATIONAL ASSEMBLY

#### 44. Legislative Power

The legislative power of Namibia shall be vested in the National Assembly with the power to pass laws with the assent of the President as provided in this Constitution subject, where applicable, to the powers and functions of the National Council as set out in this Constitution

#### 45. Representative Nature

The members of the National Assembly shall be representative of all the people and shall in the performance of their duties be guided by the objectives of this Constitution, by the public interest and by their conscience

#### 46. Composition

(1) The composition of the National Assembly shall be as follows

a) seventy-two members to be elected by the registered voters by general, direct and secret ballot Every Namibian citizen who has the qualifications described in Article 17 shall be entitled to vote in the elections for members of the National Assembly and, subject to Article 47, shall be eligible for candidature as a member of the National Assembly,

b) not more than six persons appointed by the President under Article 32 (3)(c), by virtue of their special expertise, status, skill or experience provided that such members shall have no vote in the National Assembly, and shall not be taken into account for the purpose of determining any specific majorities that are required under this Constitution or any other law

(2) Subject to the principles referred to in Article 49, the members of the National Assembly referred to in paragraph (1)(a) shall be elected in accordance with procedures to be determined by Act of Parliament

#### 47. Disqualification of Members

(1) No persons may become members of the National Assembly if they

a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or to imprisonment of more than twelve months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten years before the date of their election, or

b) have at any time prior to Independence been convicted of an offence, if such conduct would have constituted an offence within Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve months without the option of a fine, unless they have received a free pardon or unless such

imprisonment has expired at least ten years before the date of their election provided that no person sentenced to death or imprisonment for acts committed in connection with the struggle for the independence of Namibia shall be disqualified under this paragraph from being elected as a member of the National Assembly, or

- c) are unrehabilitated insolvents, or
- d) are of unsound mind and have been so declared by a competent Court, or
- e) are remunerated members of the public service of Namibia, or
- f) are members of the National Council, Regional Councils or Local Authorities

(2) For the purpose of paragraph (1)

a) no person shall be considered as having been convicted by any court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired,

b) the public service shall be deemed to include the defence force, the police force, the prison service, para-statal enterprises, Regional Councils and local authorities

#### 48 Vacation of Seats

(1) Members of the National Assembly shall vacate their seats

a) if they cease to have the qualifications which rendered them eligible to be members of the National Assembly,

b) if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party,

c) if they resign their seats in writing addressed to the Speaker,

d) if they are removed by the National Assembly pursuant to its rules and standing orders permitting or requiring such removal for good and sufficient reasons,

e) if they are absent during sittings of the National Assembly for ten consecutive sitting days, without having obtained the special leave of the National Assembly on grounds specified in its rules and standing orders

(2) If the seat of a member of the National Assembly is vacated in terms of paragraph (1), the political party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating any person on the party's election list compiled for the previous general election, or if there be no such person, by nominating any member of the party

#### 49 Elections

The election of members in terms of Article 46 (1)(a) shall be on party lists and in accordance with the principles of proportional representation as set out in Schedule 4

**50. Duration**

Every National Assembly shall continue for a maximum period of five years, but it may before the expiry of its term be dissolved by the President by Proclamation as provided for in Articles 32 (3)(a) and 57 (1)

**51. Speaker**

(1) At the first sitting of a newly elected National Assembly, the National Assembly, with the Secretary acting as Chairperson, shall elect a member as Speaker. The National Assembly shall then elect another member as Deputy Speaker. The Deputy Speaker shall act as Speaker whenever the Speaker is not available.

(2) The Speaker or Deputy Speaker shall cease to hold office if he or she ceases to be a member of the National Assembly. The Speaker or Deputy Speaker may be removed from office by resolution of the National Assembly, and may resign from office or from the National Assembly in writing addressed to the Secretary of the National Assembly.

(3) When the office of Speaker or Deputy Speaker becomes vacant the National Assembly shall elect a member to fill the vacancy.

(4) When neither the Speaker nor the Deputy Speaker is available for duty, the National Assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker.

**52. Secretary and other Officers**

(1) Subject to the provisions of the laws pertaining to the public service and the directives of the National Assembly, the Speaker shall appoint a person (or designate a person in the public service made available for that purpose), as the Secretary of the National Assembly, who shall perform the functions and duties assigned to such Secretary by this Constitution or by the Speaker.

(2) Subject to the laws governing the control of public monies, the Secretary shall perform his or her functions and duties under the control of the Speaker.

(3) The Secretary shall be assisted by officers of the National Assembly who shall be persons in the public service made available for that purpose.

**53. Quorum**

The presence of at least thirty-seven members of the National Assembly entitled to vote, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers and the performance of its functions.

**54. Casting Vote**

In the case of an equality of votes in the National Assembly, the Speaker or the Deputy Speaker or the presiding member shall have and may exercise a casting vote.

**55. Oath or Affirmation**

Every member of the National Assembly shall make and subscribe to an oath or solemn affirmation before the Chief Justice or a Judge designated by the Chief Justice for this purpose, in the terms set out in Schedule 3

**56. Assent to Bills**

(1) Every Bill passed by Parliament in terms of this Constitution in order to acquire the status of an Act of Parliament shall require the assent of the President to be signified by the signing of the Bill and the publication of the Act in the Gazette

(2) Where a Bill is passed by a majority of two-thirds of all the members of the National Assembly and has been confirmed by the National Council the President shall be obliged to give his or her assent thereto

(3) Where a Bill is passed by a majority of the members of the National Assembly but such majority consists of less than two-thirds of all the members of the National Assembly and has been confirmed by the National Council, but the President declines to assent to such bill, the President shall communicate such dissent to the Speaker

(4) If the President has declined to assent to a Bill under paragraph (3), the National Assembly may reconsider the Bill and, if it so decides, pass the Bill in the form in which it was referred back to it, or in an amended form or it may decline to pass the Bill. Should the Bill then be passed by a majority of the National Assembly it will not require further confirmation by the National Council but, if the majority consists of less than two-thirds of all the members of the National Assembly, the President shall retain his or her power to withhold assent to the Bill. If the President elects not to assent to the Bill, it shall then lapse

**57. Dissolution**

(1) The National Assembly may be dissolved by the President on the advice of the Cabinet if the Government is unable to govern effectively

(2) Should the National Assembly be dissolved a national election for a new National Assembly and a new President shall take place within a period of ninety days from the date of such dissolution

**58. Conduct of Business after Dissolution**

Notwithstanding the provisions of Article 57

a) every person who at the date of its dissolution was a member of the National Assembly shall remain a member of the National Assembly and remain competent to perform the functions of a member until the day immediately preceding the first polling day for the election held in pursuance of such dissolution,

b) the President shall have power to summon Parliament for the conduct of business during the period following such dissolution, up to and including the day immediately preceding the first polling day for the election held in pursuance of such dissolution, in the same manner and in all respects as if the dissolution had not occurred

**59. Rules of Procedure, Committees and Standing Orders**

(1) The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of committees, and formulate such standing orders, as may appear to it to be expedient or necessary

(2) The National Assembly shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members

(3) For the purpose of exercising its powers and performing its functions any committee of the National Assembly established in terms of paragraph (1) shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it

**60. Duties, Privileges and Immunities of Members**

(1) The duties of the members of the National Assembly shall include the following

a) all members of the National Assembly shall maintain the dignity and image of the National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly,

b) all members of the National Assembly shall regard themselves as servants of the people of Namibia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people

(2) A Private Members' Bill may be introduced in the National Assembly if supported by one-third of all the members of the National Assembly

(3) Rules providing for the privileges and immunities of members of the National Assembly shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities

**61. Public Access to Sittings**

(1) Save as provided in paragraph (2), all meetings of the National Assembly shall be held in public and members of the public shall have access to such meetings

(2) Access by members of the public in terms of paragraph (1) may be denied if the National Assembly adopts a motion supported by two-thirds of all its members excluding such access to members of the public for specified periods or in respect of specified matters. Such a motion shall only be considered if it is supported by at least one-tenth of all the members of the National Assembly and the debate on such motion shall not be open to members of the public

**62. Sessions**

(1) The National Assembly shall sit

a) at its usual place of sitting determined by the National Assembly, unless the Speaker directs otherwise on the grounds of public interest, security or convenience,

b) for at least two sessions during each year, to commence and terminate on such dates as the National Assembly from time to time determines,

c) for such special sessions as directed by Proclamation by the President from time to time

(2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as the National Assembly by its rules and standing orders may provide

(3) The day of commencement of any session of the National Assembly may be altered by Proclamation by the President, if the President is requested to do so by the Speaker on grounds of public interest or convenience.

### 63. Functions and Powers

(1) The National Assembly, as the principal legislative authority in and over Namibia, shall have the power, subject to this Constitution, to make and repeal laws for the peace, order and good government of the country in the best interest of the people of Namibia

(2) The National Assembly shall further have the power and function, subject to this Constitution

a) to approve budgets for the effective government and administration of the country,

b) to provide for revenue and taxation,

c) to take such steps as it considers expedient to uphold and defend this Constitution and the laws of Namibia and to advance the objectives of Namibian independence,

d) to consider and decide whether or not to succeed to such international agreements as may have been entered into prior to Independence by administrations within Namibia in which the majority of the Namibian people have historically not enjoyed democratic representation and participation;

e) to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32 (3)(e).

f) to receive reports on the activities of the Executive, including parastatal enterprises and from time to time to require any senior official to appear before any of the committees of the National Assembly to account for and explain his or her acts and programmes

g) to initiate, approve or decide to hold a referendum on matters of national concern,

h) to debate and to advise the President in regard to any matters which by this Constitution the President is authorised to deal with,

i) to remain vigilant and vigorous for the purpose of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent Namibia and to

protect and assist disadvantaged citizens of Namibia who have historically been the victims of these pathologies,

j) generally to exercise any other functions and powers assigned to it by this Constitution or any other law and any other functions incidental thereto

#### **64. Withholding of Presidential Assent**

(1) Subject to the provisions of this Constitution, the President shall be entitled to withhold his or her assent to a Bill approved by the National Assembly if in the President's opinion such Bill would upon adoption conflict with the provisions of this Constitution

(2) Should the President withhold assent on the grounds of such opinion, he or she shall so inform the Speaker who shall inform the National Assembly thereof, and the Attorney-General, who may then take appropriate steps to have the matter decided by a competent court

(3) Should such court thereafter conclude that such Bill is not in conflict with the provisions of this Constitution, the President shall assent to the said Bill if it was passed by the National Assembly by a two-thirds majority of all its members. If the Bill was not passed with such majority, the President may withhold his or her assent to the Bill, in which event the provisions of Article 56 (3) and (4) shall apply

(4) Should such court conclude that the disputed Bill would be in conflict with any provisions of this Constitution, the said Bill shall be deemed to have lapsed and the President shall not be entitled to assent thereto

#### **65. Signature and Enrolment of Acts**

(1) When any Bill has become an Act of Parliament as a result of its having been passed by Parliament, signed by the President and published in the Gazette, the Secretary of the National Assembly shall promptly cause two fair copies of such Act in the English language to be enrolled in the office of the Registrar of the Supreme Court and such copies shall be conclusive evidence of the provisions of the Act

(2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff

#### **66. Customary and Common Law**

(1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law

(2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods

**67. Requisite Majorities**

Save as provided in this Constitution, a simple majority of votes cast in the National Assembly shall be sufficient for the passage of any Bill or resolution of the National Assembly

## **CHAPTER VIII**

### **THE NATIONAL COUNCIL**

**68 Establishment**

There shall be a National Council which shall have the powers and functions set out in this Constitution

**69. Composition**

(1) The National Council shall consist of two members from each region referred to in Article 102, to be elected from amongst their members by the Regional Council for such region

(2) The elections of members of the National Council shall be conducted according to procedures to be prescribed by Act of Parliament

**70 Term of Office of Members**

(1) Members of the National Council shall hold their seats for six years from the date of their election and shall be eligible for re-election

(2) When a seat of a member of the National Council becomes vacant through death, resignation or disqualification, an election for a successor to occupy the vacant seat until the expiry of the predecessor's term of office shall be held, except in the instance where such vacancy arises less than six months before the expiry of the term of the National Council, in which instance such vacancy need not be filled. Such election shall be held in accordance with the procedures prescribed by the Act of Parliament referred to in Article 69(2)

**71. Oath or Affirmation**

Every member of the National Council shall make and subscribe to an oath or solemn affirmation before the Chief Justice, or a Judge designated by the Chief Justice for this purpose, in the terms set out in Schedule 3

**72. Qualifications of Members**

No person shall be qualified to be a member of the National Council if he or she is an elected member of a local authority, and unless he or she is qualified under Article 47 (1)(a) to (e) to be a member of the National Assembly

**73. Chairperson and Vice-Chairperson**

The National Council shall, before proceeding to the dispatch of any other business, elect from its members a Chairperson and a Vice-Chairperson. The Chairperson, or in his or her absence the Vice-Chairperson, shall preside over sessions of the National Council. Should neither the Chairperson nor the Vice-Chairperson be present at any session, the National Council shall elect

from amongst its members a person to act as Chairperson in their absence during that session

#### **74. Powers and Functions**

(1) The National Council shall have the power to

a) consider in terms of Article 75 all bills passed by the National Assembly,

b) investigate and report to the National Assembly on any subordinate legislation, reports and documents which under law must be tabled in the National Assembly and which are referred to it by the National Assembly for advice,

c) recommend legislation on matters of regional concern for submission to and consideration by the National Assembly,

d) perform any other functions assigned to it by the National Assembly or by an Act of Parliament

(2) The National Council shall have the power to establish committees and to adopt its own rules and procedures for the exercise of its powers and the performance of its functions. A committee of the National Council shall be entitled to conduct all such hearings and collect such evidence as it considers necessary for the exercise of the National Council's powers of review and investigations, and for such purposes shall have the powers referred to in Article 59 (3)

(3) The National Council shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members

(4) The duties of the members of the National Council shall include the following

a) all members of the National Council shall maintain the dignity and image of the National Council both during the sittings of the National Council as well as in their acts and activities outside the National Council,

b) all members of the National Council shall regard themselves as servants of the people of Namibia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people

(5) Rules providing for the privileges and immunities of members of the National Council shall be made by Act of Parliament and all members shall be entitled to the protection of such privileges and immunities

#### **75. Review of Legislation**

(1) All Bills passed by the National Assembly shall be referred by the Speaker to the National Council

(2) The National Council shall consider Bills referred to it under paragraph (1) and shall submit reports thereon with its recommendations to the Speaker

(3) If in its report to the Speaker the National Council confirms a Bill, the Speaker shall refer it to the President to enable the President to deal with it under Articles 56 and 64

(4) (a) If the National Council in its report to the Speaker recommends that the Bill be passed subject to amendments proposed by it, such Bill shall be referred by the Speaker back to the National Assembly

(b) If a Bill is referred back to the National Assembly under paragraph (a), the National Assembly may reconsider the Bill and may make any amendments thereto, whether proposed by the National Council or not. If the Bill is again passed by the National Assembly, whether in the form in which it was originally passed, or in an amended form, the Bill shall not again be referred to the National Council, but shall be referred by the Speaker to the President to enable it to be dealt with under Articles 56 and 64

(5) (a) If a majority of two-thirds of all the members of the National Council objects to the principle of a Bill, this shall be mentioned in its report to the Speaker. In that event, the report shall also indicate whether or not the National Council proposes that amendments be made to the Bill, if the principle of the Bill is confirmed by the National Assembly under paragraph (b), and if amendments are proposed, details thereof shall be set out in the report

(b) If the National Council in its report to the principle of the Bill, the National Assembly shall be required to reconsider the principle. If upon such reconsideration the National Assembly reaffirms the principle of the Bill by a majority of two-thirds of all its members, the principle of the Bill shall no longer be an issue. If such two-thirds majority is not obtained in the National Assembly, the Bill shall lapse

(6) (a) If the National Assembly reaffirms the principle of the Bill under paragraph 5(b) by a majority of two-thirds of all its members, and the report of the National Council proposed that in such event amendments be made to the Bill, the National Assembly shall then deal with the amendments proposed by the National Council, and in that event the provisions of paragraph 4(b) shall apply *mutatis mutandis*

(b) If the National Assembly reaffirms the principle of the Bill under paragraph 5(b) by a majority of two-thirds of all its members, and the report of the National Council did not propose that in such event amendments be made to the Bill, the National Council shall be deemed to have confirmed the Bill, and the Speaker shall refer the Bill to the President to be dealt with under Articles 56 and 64

(7) Paragraphs (5) and (6) shall not apply to Bills dealing with the levying of taxes or the appropriation of public monies

(8) The National Council shall report to the Speaker on all Bills dealing with the levying of taxes or appropriations of public monies within thirty days of the date on which such bills were referred to it by the Speaker, and on all other bills within three months of the date of referral by the Speaker, failing

which the National Council will be deemed to have confirmed such bills and the Speaker shall then refer them promptly to the President to enable the President to deal with the bills under Articles 56 and 64

(9) If the President withholds his or her assent to any Bill under Article 59 and the Bill is then dealt with in terms of that Article, and is again passed by the National Assembly in the form in which it was originally passed or in an amended form, such Bill shall not again be referred to the National Council but shall be referred by the Speaker directly to the President to enable the Bill to be dealt with in terms of Articles 56 and 64

#### **76. Quorum**

The presence of a majority of the members of the National Council shall be necessary to constitute a meeting of the National Council for the exercise of its powers and the performance of its functions

#### **77. Voting**

Save as is otherwise provided in this Constitution, all questions in the National Council shall be determined by a majority of the votes cast by members present other than the Chairperson, or in his or her absence the Vice-Chairperson or the member presiding at that session, who shall, however have and may exercise a casting vote in the case of an equality of votes

### **CHAPTER IX THE ADMINISTRATION OF JUSTICE**

#### **78. The Judiciary**

(1) The judicial power shall be vested in the courts of Namibia, which shall consist of

- a) a Supreme Court of Namibia,
- b) a High Court of Namibia;
- c) Lower Courts of Namibia

(2) The courts shall be independent and subject only to this Constitution and the law

(3) No member of the Cabinet or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the courts may require to protect their independence, dignity and effectiveness, subject to the terms of this Constitution or any other law

(4) The Supreme Court and the High Court shall have the inherent jurisdiction which vested in the Supreme Court of South-West Africa immediately prior to the date of Independence, including the power to regulate their own procedures and to make court rules for that purpose

#### **79. The Supreme Court**

(1) The Supreme Court shall consist of a Chief Justice and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine

(2) The Supreme Court shall be presided over by the Chief Justice and shall hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed thereunder. The Supreme Court shall also deal with matters referred to it for decision by the Attorney-General under this Constitution, and with such other matters as may be authorised by Act of Parliament.

(3) Three Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters referred to it by the Attorney-General under this Constitution provided that provision may be made by Act of Parliament for a lesser quorum in circumstances in which a Judge seized of an appeal dies or becomes unable to act at any time prior to judgment.

(4) The jurisdiction of the Supreme Court with regard to appeals shall be determined by Act of Parliament.

#### **80. The High Court**

(1) The High Court shall consist of a Judge-President and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.

(2) The High Court shall have original jurisdiction to hear and adjudicate upon all civil disputes and criminal prosecutions, including cases which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed thereunder. The High Court shall also have jurisdiction to hear and adjudicate upon appeals from lower courts.

(3) The jurisdiction of the High Court with regard to appeals shall be determined by Act of Parliament.

#### **81 Binding Nature of Decisions of the Supreme Court**

A decision of the Supreme Court shall be binding on all other courts of Namibia and all persons in Namibia unless it is reversed by the Supreme Court itself, or is contradicted by an Act of Parliament lawfully enacted.

#### **82. Appointment of Judges**

(1) All appointments of Judges to the Supreme Court and the High Court shall be made by the President on the recommendation of the Judicial Service Commission and upon appointment Judges shall make an oath or affirmation of office in the terms set out in Schedule 1.

(2) At the request of the Chief Justice the President may appoint Acting Judges of the Supreme Court to fill casual vacancies in the Court from time to time, or as ad hoc appointments to sit in cases involving constitutional issues or the guarantee of fundamental rights and freedoms, if in the opinion of the Chief Justice it is desirable that such persons should be appointed to hear such cases by reason of their special knowledge of or expertise in such matters.

(3) At the request of the Judge-President, the President may appoint Acting Judges of the High Court from time to time to fill casual vacancies in the Court, or to enable the Court to deal expeditiously with its work

(4) All Judges, except Acting Judges, appointed under this Constitution shall hold office until the age of sixty-five but the President shall be entitled to extend the retiring age of any Judge to seventy. It shall also be possible by Act of Parliament to make provision for retirement at ages higher than those specified in this article

### **83. Lower Courts**

(1) Lower courts shall be established by Act of Parliament and shall have the jurisdiction and adopt the procedures prescribed by such Act and regulations made thereunder

(2) Lower courts shall be presided over by Magistrates or other judicial officers appointed in accordance with procedures prescribed by Act of Parliament

### **84. Removal of Judges from Office**

(1) A Judge may be removed from office before the expiry of his or her tenure only by the President acting on the recommendation of the Judicial Service Commission

(2) Judges may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of paragraph (3)

(3) The Judicial Service Commission shall investigate whether or not a Judge should be removed from office on such grounds, and if it decides that the Judge should be removed, it shall inform the President of its recommendation

(4) If the deliberations of the Judicial Service Commission pursuant to this Article involve the conduct of a member of the Judicial Service Commission, such Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Judge from office

### **85. The Judicial Service Commission**

(1) There shall be a Judicial Service Commission consisting of the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia

(2) The Judicial Service Commission shall perform such functions as are prescribed for it by this Constitution or any other law

(3) The Judicial Service Commission shall be entitled to make such rules and regulations for the purposes of regulating its procedures and functions as are not inconsistent with this Constitution or any other law

(4) Any casual vacancy in the Judicial Service Commission may be filled by the Chief Justice or in his or her absence by the Judge appointed by the President

**86. The Attorney-General**

There shall be an Attorney-General appointed by the President in accordance with the provisions of Article 32(3)(i)(cc)

**87. Powers and Functions of the Attorney-General**

The powers and functions of the Attorney-General shall be

- a) to exercise the final responsibility for the office of the Prosecutor-General,
- b) to be in principal legal adviser to the President and Government
- c) to take all action necessary for the protection and upholding of the Constitution,
- d) to perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament

**88. The Prosecutor-General**

(1) There shall be a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. No person shall be eligible for appointment as Prosecutor-General unless such person

- a) possesses legal qualifications that would entitle him or her to practice in all the courts of Namibia,
- b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Prosecutor-General

(2) The powers and functions of the Prosecutor-General shall be.

- a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings,
- b) to prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court,
- c) to perform all functions relating to the exercise of such powers,
- d) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any court,
- e) to perform all such other functions as may be assigned to him or her in terms of any other law

**CHAPTER X****THE OMBUDSMAN****89 Establishment and Independence**

(1) There shall be an Ombudsman, who shall have the powers and functions set out in this Constitution

(2) The Ombudsman shall be independent and subject only to this Constitution and the law

(3) No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and

all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman

(4) The Ombudsman shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him or her to practice in all the courts of Namibia

#### **90. Appointment and Term of Office**

(1) The Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Service Commission

(2) The Ombudsman shall hold office until the age of sixty-five but the President may extend the retiring age of any Ombudsman to seventy

#### **91. Functions**

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following

a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society,

b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services,

c) the duty to investigate complaints concerning the over- utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia,

d) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place,

e) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Paragraphs through such means as are fair, proper and effective, including

(aa) negotiation and compromise between the parties concerned,

(bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person,

(cc) referring the matter to the Prosecutor-General,

(dd) bringing proceedings in a competent court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures,

(ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise *ultra vires*,

(ff) reviewing such laws as were in operation before the date of Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon,

f) the duty to investigate vigorously all instances or alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General pursuant thereto,

g) the duty to report annually to the National Assembly on the exercise of his or her powers and functions

## 92. Powers of Investigation

The powers of the Ombudsman shall be defined by Act of Parliament and shall include the power

a) to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman,

b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court,

c) to question any person,

d) to require any person to co-operate with the Ombudsman and to disclose truthfully and frankly any information within his or her knowledge relevant to any investigation of the Ombudsman

## 93 Meaning of "Official"

For the purposes of this chapter the word "official" shall, unless the context otherwise indicate, include any elected or appointed official or employee of any organ of the central or local Government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or the Government has substantial interest, or any officer of the defence force, the police force or the prison service, but shall not include a Judge of the Supreme Court or the High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer

## 94 Removal from Office

(1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission

(2) The Ombudsman may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of paragraph (3)

(3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in paragraph (2) and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation

(4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office

## CHAPTER XI

### PRINCIPLES OF STATE POLICY

#### 95. Promotion of the Welfare of the People

The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following

a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society, in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women, further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women,

b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength,

c) active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices,

d) membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO,

e) insurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law,

f) insurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities,

g) enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State,

h) a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State,

i) insurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities,

j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health,

k) encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions,

l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future, in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory

#### 96 Foreign Relations

The State shall endeavour to ensure that in its international relations it

- a) adopts and maintains a policy of non-alignment,
- b) promotes international co-operation, peace and security,
- c) creates and maintains just and mutually beneficial relations among nations,
- d) fosters respect for international law and treaty obligations,
- e) encourages the settlement of international disputes by peaceful means

#### 97. Asylum

The State shall, where it is reasonable to do so, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group

#### 98 Principles of Economic Order

(1) The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians.

(2) The Namibian economy shall be based, inter alia, on the following forms of ownership

- a) public,
- b) private,
- c) joint public-private,
- d) co-operative,

- e) co-ownership;
- f) small-scale family

### 99. Foreign Investments

Foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament

### 100. Sovereign Ownership of Natural Resources

Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned

### 101. Application of the Principles contained in this Chapter

The principles of state policy contained in this Chapter shall not of and by themselves be legally enforceable by any court, but shall nevertheless guide the Government in making and applying laws to give effect to the fundamental objectives of the said principles. The courts are entitled to have regard to the said principles in interpreting any laws based on them

## CHAPTER XII

### REGIONAL AND LOCAL GOVERNMENT

#### 102. Structures of Regional and Local Government

(1) For purpose of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such region and local authorities as may be determined and defined by Act of Parliament

(2) The delineation of the boundaries of the regions and local authorities referred to in paragraph (1) shall be geographical only, without any reference to the race, colour or ethnic origin of the inhabitants of such areas

(3) Every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament referred to in paragraph (1), with an executive and administration which shall carry out all lawful resolutions and policies of such Council, subject to this Constitution and any other relevant laws

(4) For the purposes of this Chapter, a local authority shall include all municipalities, communities, village councils and other organs of local government defined and constituted by Act of Parliament

(5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice

#### 103. Establishment of Regional Councils

(1) the boundaries of regions shall be determined by a Delimitation Commission in accordance with the principles set out in Article 102 (2)

(2) The boundaries of regions may be changed from time to time and new regions may be created from time to time, but only in accordance with the recommendation of the Delimitation Commission

(3) A Regional Council shall be established for every region the boundaries of which have been determined in accordance with paragraphs (1) and (2).

#### **104. The Delimitation Commission**

(1) The Delimitation Commission shall consist of a Chairperson who shall be a Judge of the Supreme Court or the High Court, and two other persons to be appointed by the President with the approval of Parliament

(2) The Delimitation Commission shall discharge its duties in accordance with the provisions of an Act of Parliament and this Constitution, and shall report thereon to the President

#### **105 Composition of Regional Councils**

Every Regional Council shall consist of a number of persons determined by the Delimitation Commission for the particular region for which that Regional Council has been established, and who are qualified to be elected to the National Council

#### **106 Regional Council Elections**

(1) Each region shall be divided into constituencies the boundaries of which shall be fixed by the Delimitation Commission in accordance with the provisions of an Act of Parliament and this Constitution, provided that there shall be no fewer than six and no more than twelve constituencies in each region

(2) Each constituency shall elect one member to the Regional Council for the region in which it is situated

(3) The elections shall be by secret ballot to be conducted in accordance with the provisions of an Act of Parliament, and the candidate receiving the most votes in any constituency shall be the elected member of the Regional Council for that constituency

(4) All Regional Council elections for the various regions of Namibia shall be held on the same day

(5) The date for Regional Council elections shall be determined by the President by Proclamation in the Gazette

#### **107. Remuneration of Members of Regional Councils**

The remuneration and allowances to be paid to members of Regional Councils shall be determined by Act of Parliament.

#### **108 Powers of Regional Councils**

Regional Councils shall have the following powers.

- a) to elect members to the National Council,
- b) to exercise within the region for which they have been constituted such executive powers and to perform such duties in connection

therewith as may be assigned to them by Act of Parliament and as may be delegated to them by the President,

c) to raise revenue, or share in the revenue raised by the central Government within the regions for which they have been established, as may be determined by Act of Parliament,

d) to exercise powers, perform any other functions and make such by-laws or regulations as may be determined by Act of Parliament

#### **109. Management Committees**

(1) Each Regional Council shall elect from amongst its members a Management Committee, which shall be vested with executive powers in accordance with the provisions of an Act of Parliament

(2) The Management Committee shall have a Chairperson to be elected by the members of the Regional Council at the time that they elect the Management Committee, and such Chairperson shall preside at meetings of his or her Regional Council

(3) The Chairperson and the members of the Management Committee shall hold office for three years and shall be eligible for re-election

#### **110. Administration and Functioning of Regional Councils**

The holding and conducting of meetings of Regional Councils, the filling of casual vacancies on Regional Councils and the employment of officials by the Regional Councils, as well as all other matters dealing with or incidental to the administration and functioning of Regional Councils, shall be determined by Act of Parliament

#### **111. Local Authorities**

(1) Local authorities shall be established in accordance with the provisions of Article 102

(2) The boundaries of local authorities, the election of Councils to administer the affairs of local authorities, the method of electing persons to local authority Councils, the methods of raising revenue for local authorities, the remuneration of local authority Councillors and all other matters dealing with or incidental to the administration and functioning of local authorities, shall be determined by Act of Parliament

(3) Persons shall be qualified to vote in elections for local authorities Councils if such persons have been resident within the jurisdiction of a local authority for not less than one year immediately prior to such election and if such persons are qualified to vote in elections for the National Assembly

(4) Different provisions may be made by the Act of Parliament referred to in paragraph (2) in regard to different types of local authorities

(5) All by-laws or regulations made by local authorities pursuant to powers vested in them by Act of Parliament shall be tabled in the National Assembly and shall cease to be of force if a resolution to that effect is passed by the National Assembly

### **CHAPTER XIII**

#### **THE PUBLIC SERVICE COMMISSION**

##### **112. Establishment**

(1) There shall be established a Public Service Commission which shall have the function of advising the President on the matters referred to in Article 113 and of reporting to the National Assembly thereon

(2) The Public Service Commission shall be independent and act impartially

(3) The Public Service Commission shall consist of a Chairperson and no fewer than three and no more than six other persons nominated by the President and appointed by the National Assembly by resolution.

(4) Every member of the Public Service Commission shall be entitled to serve on such Commission for a period of five years unless lawfully removed before the expiry of that period for good and sufficient reasons in terms of this Constitution and procedures to be prescribed by Act of Parliament. Every member of the Public Service Commission shall be eligible for reappointment

##### **113. Functions**

The functions of the Public Service Commission shall be defined by Act of Parliament and shall include the power

a) to advise the President and the Government on

(aa) the appointment of suitable persons to specified categories of employment in the public service, with special regard to the balanced structuring thereof,

(bb) the exercise of adequate disciplinary control over such persons in order to assure the fair administration of personnel policy,

(cc) the remuneration and the retirement benefits of any such persons,

(dd) all other matters which by law pertain to the public service,

b) to perform all functions assigned to it by Act of Parliament,

c) to advise the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of this Constitution or any other law

### **CHAPTER XIV**

#### **THE SECURITY COMMISSION**

##### **114. Establishment and Functions**

(1) There shall be a Security Commission which shall have the function of making recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons and such other functions as may be assigned to it by Act of Parliament

(2) The Security Commission shall consist of the Chairperson of the Public Service Commission, the Chief of the Defence Force, the Inspector-General of Police, the Commissioner of Prisons and two members of the National Assembly, appointed by the President on the recommendation of the National Assembly

## **CHAPTER XV**

### **THE POLICE AND DEFENCE FORCES AND THE PRISON SERVICE**

#### **115. Establishment of the Police Force**

There shall be established by Act of Parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and to maintain law and order

#### **116. The Inspector-General of Police**

(1) There shall be an Inspector-General of Police who shall be appointed by the President in terms of Article 32 (4)(c)(bb)

(2) The Inspector-General of Police shall make provision for a balanced structuring of the police force and shall have the power to make suitable appointments to the police force, to cause charges of indiscipline among members of the police force to be investigated and prosecuted and to ensure the efficient administration of the police force

#### **117. Removal of the Inspector-General of Police**

The President may remove the Inspector-General of Police from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose

#### **118. Establishment of the Defence Force**

(1) There shall be established by Act of Parliament a Namibian Defence Force with prescribed composition, powers, duties and procedures, in order to defend the territory and national interests of Namibia

(2) The President shall be the Commander-in-Chief of the Defence Force and shall have all the powers and exercise all the functions necessary for that purpose

#### **119. Chief on the Defence Force**

(1) There shall be a Chief of the Defence Force who shall be appointed by the President in terms of Article 32 (4)(c)(aa)

(2) The Chief of the Defence Force shall make provision for a balanced structuring of the defence force and shall have the power to make suitable appointments to the defence force, to cause charges of indiscipline among members of the defence force to be investigated and prosecuted and to ensure the efficient administration of the defence force

**120. Removal of the Chief of the Defence Force**

The President may remove the Chief of the Defence Force from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

**121. Establishment of the Prison Service**

There shall be established by Act of Parliament a Namibian prison service with prescribed powers, duties and procedures.

**122. Commissioner of Prisons**

(1) There shall be a Commissioner of Prisons who shall be appointed by the President in terms of Article 32 (4)(c)(cc).

(2) The Commissioner of Prisons shall make provision for a balanced structuring of the Prison Service and shall have the power to make suitable appointments to the prison service, to cause charges on indiscipline among members of the prison service to be investigated and prosecuted and to ensure the efficient administration of the Prison Service.

**123. Removal of the Commissioner of Prisons**

The President may remove the Commissioner of Prisons from office for good cause and in the public interest and in accordance with the provisions of any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

**CHAPTER XVI****FINANCE****124. Transfer of Government Assets**

The assets mentioned in Schedule 5 shall vest in the Government of Namibia on the date of Independence.

**125. The State Revenue Fund**

(1) The Central Revenue Fund of the mandated territory of South West Africa instituted in terms of section 3 of the Exchequer and Audit Proclamation, 1979 (Proclamation 85 of 1979) and section 31(1) of Proclamation R101 of 1985 shall continue as the State Revenue Fund of the Republic of Namibia.

(2) All income accruing to the central Government shall be deposited in the State Revenue Fund and the authority to dispose thereof shall vest in the Government of Namibia.

(3) Nothing contained in paragraph (2) shall preclude the enactment of any law or the application of any law which provides that:

a) the Government shall pay any particular monies accruing to it into a fund designated for a special purpose; or

b) any body or institution to which any monies accruing to the State have been paid, may retain such monies or portions thereof for the purpose of defraying the expenses of such body or institution, or

c) where necessary, subsidies be allocated to regional and local authorities

(4) No money shall be withdrawn from the State Revenue Fund except in accordance with an Act of Parliament

(5) No body or person other than the Government shall have the power to withdraw monies from the State Revenue Fund

### **126. Appropriations**

(1) The Minister in charge of the Department of Finance shall, at least once every year and thereafter at such interim stages as may be necessary, present for the consideration of the National Assembly estimates of revenue, expenditure and income for the prospective financial year

(2) The National Assembly shall consider such estimates and pass pursuant thereto such Appropriation Acts as are in its opinion necessary to meet the financial requirements of the State from time to time

### **127. The Auditor-General**

(1) There shall be an Auditor-General appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly. The Auditor-General shall hold office for five years unless removed earlier under paragraph (4) or unless he or she resigns. The Auditor-General shall be eligible for reappointment

(2) The Auditor-General shall audit the State Revenue Fund and shall perform all other functions assigned to him or her by the Government or by Act of Parliament and shall report annually to the National Assembly thereon

(3) The Auditor-General shall not be a member of the public service

(4) The Auditor-General shall not be removed from office unless a two-thirds majority of all the members of the National Assembly vote for such removal on the ground of mental incapacity or gross misconduct

## **CHAPTER XVII**

### **CENTRAL BANK AND NATIONAL PLANNING COMMISSION**

#### **128. The Central Bank**

(1) There shall be established by Act of Parliament a Central Bank of the Republic of Namibia which shall serve as the State's principal instrument to control the money supply, the currency and the institutions of finance, and to perform all other functions ordinarily performed by a Central Bank

(2) The Governing Board of the Central Bank shall consist of a Governor, a Deputy Governor and such other members of the Board as shall be prescribed by Act of Parliament, and all members of the Board shall be appointed by the President in accordance with procedures prescribed by such Act of Parliament

**129. The National Planning Commission**

(1) There shall be established in the office of the President a National Planning Commission, whose task shall be to plan the priorities and direction of national development

(2) There shall be a Director-General of Planning appointed by the President in terms of Article 32(3)(d), who shall be the head of the National Planning Commission and the principal adviser to the President in regard to all matters pertaining to economic planning and who shall attend Cabinet meetings at the request of the President

(3) The membership, powers, functions and personnel of the National Planning Commission shall be regulated by Act of Parliament

**CHAPTER XVIII****COMING INTO FORCE OF THE CONSTITUTION****130. Coming into Force of the Constitution**

This Constitution as adopted by the Constituent Assembly shall come into force on the date of Independence

**CHAPTER XIX****AMENDMENT OF THE CONSTITUTION****131. Entrenchment of Fundamental Rights and Freedoms**

No repeal or amendment of any of the provisions of Chapter 3, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect

**132 Repeal and Amendment of the Constitution**

(1) Any Bill seeking to repeal or amend any provision of this Constitution shall indicate the proposed repeals and/or amendments with reference to the specific articles sought to be repealed and/or amended and shall not deal with any matter other than the proposed repeals or amendments

(2) The majorities required in Parliament for the repeal and/or amendment of any of the provisions of this Constitution shall be

a) two-thirds of all the members of the National Assembly, and

b) two-thirds of all the members of the National Council

(3)(a) Notwithstanding the provisions of paragraph (2), if a Bill proposing a repeal and/or amendment of any of the provisions of this Constitution secures a majority of two-thirds of all the members of the National Assembly, but fails to secure a majority of two-thirds of all the members of the National Council, the President may by Proclamation

make the Bill containing the proposed repeals and/or amendments the subject of a national referendum

(b) The national referendum referred to in paragraph (a) shall be conducted in accordance with procedures prescribed for the holding of referenda by Act of Parliament.

(c) If upon the holding of such a referendum the Bill containing the proposed repeals and/or amendments is approved by a two-thirds majority of all the votes cast in the referendum, the Bill shall be deemed to have been passed in accordance with the provisions of this Constitution, and the President shall deal it in terms of Article 56

(4) No repeal or amendment of this paragraph or paragraphs (2) or (3) in so far as it seeks to diminish or detract from the majorities required in Parliament or in a referendum shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.

(5) Nothing contained in this Article.

a) shall detract in any way from the entrenchment provided for in Article 131 of the fundamental rights and freedoms contained and defined in Chapter 3,

b) shall prevent Parliament from changing its own composition or structures by amending or repealing any of the provisions of this Constitution provided always that such repeals or amendments are effected in accordance with the provisions of this Constitution

## CHAPTER XX

### THE LAW IN FORCE AND TRANSITIONAL PROVISIONS

#### 133. The First National Assembly

Notwithstanding the provisions of Article 46, the Constituent Assembly shall be deemed to have been elected under Articles 46 and 49, and shall constitute the first National Assembly of Namibia and its term of office and that of the President shall be deemed to have begun from the date of Independence

#### 134. Election of the First President

(1) Notwithstanding the provisions of Article 28, the first President of Namibia shall be the person elected to that office by the Constituent Assembly by a simple majority of all its members

(2) The first President of Namibia shall be deemed to have been elected under Article 28 and upon assuming office shall have all the powers, functions, duties and immunities of a President elected under that Article

#### 135. Implementation of this Constitution

This Constitution shall be implemented in accordance with the provisions of Schedule 7

**136. Powers of the National Assembly prior to the Election of a National Council**

(1) Until elections for a National Council have been held

a) all legislation shall be enacted by the National Assembly as if this Constitution had not made provision for a National Council, and Parliament had consisted exclusively of the National Assembly acting on its own without being subject to the review of the National Council,

b) this Constitution shall be construed as if no functions had been vested by this Constitution in the National Council,

c) any reference in Article 29, 56, 75 and 132 to the National Council shall be ignored provided that nothing contained in this paragraph shall be construed as limiting in any way the generality of paragraphs (a) and (b)

(2) Nothing contained in paragraph (1) shall detract in any way from the provisions of Chapter 8 or any other provision of this Constitution in so far as they make provision for the establishment of a National Council, elections to the National Council and its functioning after such elections have been held.

**137. Elections of the First Regional Councils and the First National Council**

(1) The President shall by Proclamation establish the first Delimitation Commission which shall be constituted in accordance with the provisions of Article 104 (1), within six months of the date of Independence

(2) Such Proclamation shall provide for those matters which are referred to in Articles 102 to 106, shall not be inconsistent with this Constitution and shall require the Delimitation Commission to determine boundaries of regions and local authorities for the purpose of holding local authority and Regional Council elections

(3) The Delimitation Commission appointed under such Proclamation shall forthwith commence its work, and shall report to the President within nine months of its appointment provided that the National Assembly may by resolution and for good cause extend the period within which such report shall be made

(4) Upon receipt of the report of the Delimitation Commission the President shall as soon as reasonably possible thereafter establish by Proclamation the boundaries of regions and Local Authorities in accordance with the terms of the report

(5) Elections for Local Authorities in terms of Article 111 shall be held on a date to be fixed by the President by Proclamation, which shall be a date within six months of the Proclamation referred to in paragraph (4), or within six months of the date on which the legislation referred to in Article 111 has been enacted, whichever is the later provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held

(6) Elections for Regional Councils shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one month of the date of the elections referred to in paragraph (5), or within one month of the date on which the legislation referred to in Article 106 (3) has been enacted, whichever is the later, provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held

(7) Elections for the first National Council shall be held on a date to be fixed by the President by Proclamation, which shall be a date within one month of the date of the elections referred to in paragraph (6), or within one month of the date on which the legislation referred to in Article 69 (2) has been enacted, whichever is the later, provided that the National Assembly may by resolution and for good cause extend the period within which such elections shall be held

### **138. Courts and Pending Actions**

(1) The Judge-President and other Judges of the Supreme Court of South-West Africa holding office at the date on which this Constitution is adopted by the Constituent Assembly shall be deemed to have been appointed as the Judge-President and Judges of the High Court of Namibia under Article 82 on the date of Independence, and upon making the oath or affirmation of office in the terms set out in Schedule 1, shall become the first Judge-President and Judges of the High Court of Namibia provided that if the Judge-President or any such Judges are sixty-five years of age or older on such date, it shall be deemed that their appointments have been extended until the age of seventy in terms of Article 82 (4)

(2)(a) The laws in force immediately prior to the date of Independence governing the jurisdiction of courts within Namibia, the right of audience before such courts, the manner in which procedure in such courts shall be conducted and the power and authority of the Judges, Magistrates and other judicial officers, shall remain in force until repealed or amended by Act of Parliament, and all proceedings pending in such courts at the date of Independence shall be continued as if such courts had been duly constituted as courts of the Republic of Namibia when the proceedings were instituted

(b) Any appeal noted to the Appellate Division of the Supreme Court of South Africa against any judgment or order of the Supreme Court of South-West Africa shall be deemed to have been noted to the Supreme Court of Namibia and shall be prosecuted before such Court as if that judgment or order appealed against had been made by the High Court of Namibia and the appeal had been noted to the Supreme Court of Namibia

(c) All criminal prosecutions initiated in courts within Namibia prior to the date of Independence shall be continued as if such prosecutions had been initiated after the date of Independence in courts of the Republic of Namibia

(d) All crimes committed in Namibia prior to the date of Independence which would be crimes according to the law of the Republic of Namibia if it had then existed, shall be deemed to constitute crimes according to the law of the Republic of Namibia, and to be punishable as such in and by the Courts of the Republic of Namibia

(3) Pending the enactment of the legislation contemplated by Article 79

a) the Supreme Court shall have the same jurisdiction to hear and determine appeals from courts in Namibia as was previously vested in the Appellate Division of the Supreme Court of South Africa,

b) the Supreme Court shall have jurisdiction to hear and determine matters referred to it for a decision by the Attorney-General under this Constitution,

c) all persons having the right of audience before the High Court shall have the right of audience the Supreme Court,

d) three Judges shall constitute a quorum of the Supreme Court when it hears appeals or deals with matters under paragraphs (a) and (b) provided that if any such Judge dies or becomes unable to act after the hearing of the appeal or such matter has commenced, but prior to judgement, the law applicable in such circumstances to the death or inability of a Judge of the High Court shall apply *mutatis mutandis*,

e) until rules of the Supreme Court are made by the Chief Justice for the noting and prosecution of appeals and all matters incidental thereto, the rules which regulated appeals from the Supreme Court of South-West Africa to the Appellate Division of the Supreme Court of South Africa, and were in force immediately prior to the date of Independence, shall apply *mutatis mutandis*

### 139. The Judicial Service Commission

(1) Pending the enactment of legislation as contemplated by Article 85 and the appointment of a Judicial Service Commission thereunder, the Judicial Service Commission shall be appointed by the President by Proclamation and shall consist of the Chief Justice, a Judge appointed by the President, the Attorney-General, an advocate nominated by the Bar Council of Namibia and an attorney nominated by the Council of the Law Society of South-West Africa provided that until the first Chief Justice has been appointed, the President shall appoint a second Judge to be a member of the Judicial Service Commission who shall hold office thereon until the Chief Justice has been appointed. The Judicial Service Commission shall elect from amongst its members as its first meeting the person to preside at its meetings until the Chief Justice has been appointed. The first task of the Judicial Service Commission shall be to make a recommendation to the President with regard to the appointment of the first Chief Justice

(2) Save as aforesaid the provisions of Article 85 shall apply to the functioning of the Judicial Service Commission appointed under paragraph (1), which shall have all the powers vested in the Judicial Service Commission by this Constitution

**140. The Law in Force at the Date of Independence**

(1) Subject to the provisions of this Constitution, all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent court

(2) Any powers vested by such laws in the Government, or in a Minister or other official of the Republic of South Africa shall be deemed to vest in the Government of the Republic of Namibia or in a corresponding Minister or official of the Government of the Republic of Namibia, and all powers, duties and functions which so vested in the Government Service Commission shall vest in the Public Service Commission referred to in Article 112

(3) Anything done under such laws prior to the date of Independence by the Government, or by a Minister or other official of the Republic of South Africa shall be deemed to have been done by the Government of the Republic of Namibia or by a corresponding Minister or official of the Government of the Republic of Namibia, unless such action is subsequently repudiated by an Act of Parliament, and anything so done by the Government Service Commission shall be deemed to have been done by the Public Service Commission referred to in Article 112, unless it is determined otherwise by an Act of Parliament

(4) Any reference in such laws to the President, the Government a Minister or other official or institution in the Republic of South Africa shall be deemed to be a reference to the President of Namibia or to a corresponding Minister, official or institution in the Republic of Namibia and any reference to the Government Service Commission or the Government Service, shall be construed as a reference to the Public Service Commission referred to in Article 112 or the Public Service of Namibia

(5) For the purpose of this article the Government of the Republic of South Africa shall be deemed to include the Administration of the Administrator-General appointed by the Government of South Africa to administer Namibia, and any reference to the Administrator-General in legislation enacted by such Administration shall be deemed to be a reference to the President of Namibia, and any reference to a Minister or official of such administration shall be deemed to be a reference to a corresponding Minister or official of the Government of the Republic of Namibia

**141. Existing Appointments**

(1) Subject to the provisions of this Constitution, any person holding office under any law in force on the date of Independence shall continue to hold such office unless and until he or she resigns or is retired, transferred or removed from office in accordance with law

(2) Any reference to the Attorney-General in legislation in force immediately prior to the date of Independence shall be deemed to be a reference to the Prosecutor-General, who shall exercise his or her functions in accordance with this Constitution

#### 142. Appointment of the First Officers of Defence Force, Police, and Prisons

The President shall, in consultation with the leaders of all political parties represented in the National Assembly, appoint by Proclamation the first Chief of the Defence Force, the first Inspector-General of Police and the first Commissioner of Prisons

#### 143. Existing International Agreements

All existing international agreements binding upon Namibia shall remain in force, unless and until the National Assembly acting under Article 63 (2)(d) otherwise decides

### CHAPTER XXI FINAL PROVISIONS

#### 144. International Law

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia

#### 145. Saving

(1) Nothing contained in this Constitution shall be construed as imposing upon the Government of Namibia

a) any obligations to any other State which would not otherwise have existed under international law,

b) any obligations to any person arising out of the acts or contracts of prior Administrations which would not otherwise have been recognised by international law as binding upon the Republic of Namibia

(2) Nothing contained in this Constitution shall be construed as recognising in any way the validity of the Administration of Namibia by the Government of the Republic of South Africa or by the Administrator-General appointed by the Government of the Republic of South Africa to administer Namibia

#### 146. Definitions

(1) Unless the context otherwise indicates, any word or expression in this Constitution shall bear the meaning given to such word or expression in any law which deals with the interpretation of statutes and which was in operation within the territory of Namibia prior to the date of Independence

(2)(a) The word "Parliament" shall mean the National Assembly and, once the first National Council has been elected, shall mean the National Assembly acting, when so required by this Constitution, subject to the review of the National Council

(b) Any reference to the plural shall include the singular and any reference to the singular shall include the plural

(c) Any references to the "date of Independence" or "Independence" shall be deemed to be a reference to the day as of which Namibia is declared to be independent by the Constituent Assembly

(d) Any references to the "Constituent Assembly" shall be deemed to be a reference to the Constituent Assembly elected for Namibia during November 1989 as contemplated by United Nations Security Council Resolution 435 of 1978

(e) Any references to "Gazette" shall be deemed to be a reference to the Government Gazette of the Republic of Namibia

**147. Repeal of Laws**

The laws set out in Schedule 8 are hereby repealed

**148. Short Title**

This Constitution shall be called the Namibian Constitution  
(*Schedules not reproduced*)

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# 24

## CONSTITUTION OF KINGDOM OF NEPAL

{Adopted on 9 Nov 1990}

{Adopted by Act No. 2047, issued 1990}

### PREAMBLE

Whereas, We are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people, and, therefore, We have, from time to time, made known our desire to conduct the Government of the country in consonance with the popular will, and

Whereas, in keeping with the desire of the Nepalese people expressed through the recent people's movement to bring about constitutional changes, we are further inspired by the objective of securing to the Nepalese people social, political and economic justice long into the future, and

Whereas, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal, and also to consolidate Adult Franchise, the Parliamentary System of Government, Constitutional Monarchy and the System of Multi Party Democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality, and also to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality

Now, Therefore, keeping in view the desire of the people that the State authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this

Constitution, I, King Birendra Bir Bikram Shah Deva, by virtue of the Stat authority as exercised by Us, do hereby promulgate and enforce this Constitution of the Kingdom of Nepal on the recommendation and advice and with the consent of the Council of Ministers

## PART 1

### PRELIMINARY

#### 1. Constitution as the Fundamental Law

(1) This Constitution is the fundamental law of Nepal and all law inconsistent with it shall, to the extent of such inconsistency, be void

(2) It shall be the duty of every person to uphold the provisions of this Constitution

#### 2. The Nation

Having common aspirations and united by a bond of allegiance to national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste or tribe, collectively constitute the nation

#### 3. The Sovereignty

The sovereignty of Nepal is vested in the Nepalese people and shall be exercised in accordance with the provisions of this Constitution

#### 4. The Kingdom

(1) Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom

(2) The territory of Nepal shall comprise

(a) the territory existing at the commencement of this Constitution, and

(b) such other territory as may be acquired after the commencement of this Constitution

#### 5. National Flag

The national flag of Nepal, as handed down by tradition, consists of two juxtaposed triangular figures with a crimson-coloured base and deep blue borders, there being a white emblem of the crescent moon with eight rays visible out of sixteen in the upper part and a white emblem of a twelve rayed sun in the lower part. The method of drawing out the flag and other particulars relating thereto shall be as set forth in Schedule 1 (not reproduced)

#### 6. Language of the Nation

(1) The Nepali language in the Devanagari script is the language of the nation of Nepal. The Nepali language shall be the official language

(2) All the languages spoken as the mother tongue in the various parts of Nepal are the national languages of Nepal

**7. National Anthem etc.**

(1) The national anthem of Nepal shall be as provided in Schedule 2 (not reproduced)

(2) The *Rhododendron Arboreum* shall be the national flower, Crimson Colour shall be the national colour, the Cow shall be the national animal and the Lophophorus shall be the national bird of Nepal

(3) The coat-of-arms of Nepal shall be as set forth in Schedule 3 (not reproduced) The coat-of-arms may be enlarged or reduced as required, and such colour shall be used therein as specified by His Majesty's Government

## PART 2 CITIZENSHIP

**8 Citizenship at the commencement of the Constitution**

At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal:

(a) any person who is a citizen of Nepal by virtue of Article 7 of the Constitution of Nepal (1962) or section 3 of the Nepal Citizenship Act, 1964

(b) any person who has acquired naturalised citizenship of Nepal by virtue of section 6 of the Nepal Citizenship Act, 1964

**9 Acquisition and Termination of Citizenship after the Commencement of the Constitution**

(1) A person who is born after the commencement of this Constitution and whose father is a citizen of Nepal at the birth of the child shall be a citizen of Nepal by descent

(2) Every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent

(3) Whenever any territory is acquired by way of incorporation into the Kingdom of Nepal, every person having his domicile within such territory shall become a citizen of Nepal, subject to the provisions of existing laws

(4) After the commencement of this Constitution, the acquisition of citizenship of Nepal by a foreigner may be regulated by law which may, *inter alia*, require the fulfilment of the following conditions:

(a) that he can speak and write the language of the nation of Nepal;

(b) that he is engaged in any occupation in Nepal,

(c) that he has renounced his citizenship of another country, and

(d) that he has resided in Nepal for at least fifteen years

(5) Notwithstanding anything contained in clause (4), a woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen

and who has initiated proceedings for renunciation of her foreign citizenship, and any other person, who, has renounced the citizenship of Nepal had gone to a foreign country but who has renounced his foreign citizenship, may acquire the citizenship of Nepal

(6) Notwithstanding anything contained in sub-clauses (b) and (d) of clause (4), the son or daughter or descendant of a citizen of Nepal and who has resided in Nepal for a period of at least two years may acquire the citizenship of Nepal on such terms and conditions as may be prescribed by law. Provided that this clause shall not be applicable in the case of descendants of naturalized citizens.

(7) The termination of the citizenship of Nepal shall be as determined by law

### **10. Conferment of Honorary Citizenship**

Notwithstanding anything contained in Article 9, honorary citizenship may be granted to an internationally renowned person

## **PART 3**

### **FUNDAMENTAL RIGHTS**

#### **11. Right to Equality**

(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varya), sex (liga), caste (jit), tribe (ju) or ideological conviction (vaicrik) or any of these

(3) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these

Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward

(4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law

(5) No discrimination in regard to remuneration shall be made between men and women for the same work

#### **12. Right to Freedom**

(1) No person shall be deprived of his personal liberty save in accordance with law, and no law shall be made which provides for capital punishment

(2) All citizens shall have the following freedoms

- (a) freedom of opinion and expression,
- (b) freedom to assemble peaceably and without arms,
- (c) freedom to form unions and associations,
- (d) freedom to move throughout the Kingdom and reside in any part thereof, and
- (e) freedom to practise any profession, or to carry on any occupation, industry, or trade

Provided that—

(1) nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence, or on any act which may be contrary to decent public behaviour or morality,

(2) nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal,

(3) nothing in sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, which may instigate violence, or which may be contrary to public morality,

(4) nothing in sub-clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities,

(5) nothing in sub-clause (e) shall be deemed to prevent the making of laws to impose restriction on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services, or to impose any condition or qualification for carrying on any industry, trade, profession or occupation

### 13 Press and Publication Right

(1) No news item, article or any other reading material shall be censored Provided that nothing shall prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence,

or on any act against which may be contrary to decent public behaviour or morality

(2) No press shall be closed or seized for printing any news item, article or other reading material

(3) The registration of a newspaper or periodical shall not be canceled merely for publishing any news item, article or other reading material

#### **14. Right Regarding Criminal Justice**

(1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence

(2) No person shall be prosecuted or punished for the same offence in a court of law more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

(4) No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law

(5) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice

**Explanation**—For the purpose of this clause, the words "legal practitioner" shall mean any person who is authorised by law to represent any person in any court

(6) Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority

(7) Nothing in clauses (5) and (6) shall apply to a citizen of an enemy State, and nothing in clause (6) shall apply to any person who is arrested or detained under any law providing for preventive detention

#### **15. Right against Preventive Detention**

(1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal

(2) Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the right to be compensated in a manner as prescribed by law

**16 Right to Information**

Every citizen shall have the right to demand and receive information on any matter of public importance

Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law

**17. Right to Property**

(1) All citizens shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of, property

(2) The State shall not, except in the public interest, requisition, acquire or create any encumbrance on, the property of any person

(3) The basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State for in the public interest, shall be as prescribed by law

**18. Cultural and Educational Right**

(1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture

(2) Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children

**19. Right to Religion**

(1) Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices

Provided that no person shall be entitled to convert another person from one religion to another

(2) Every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts

**20 Right against Exploitation**

(1) Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law

Provided that nothing herein shall be a bar to providing by law for compulsory service for public purposes

(2) No minor shall be employed in work in any factory or mine, or be engaged in any other hazardous work

**21. Right against Exile**

No citizen shall be exiled

**22. Right to Privacy**

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable

### 23. Right to Constitutional Remedy

The right to proceed in the manner set forth in Article 88 for the enforcement of the rights conferred by this Part is guaranteed

## PART 4

### DIRECTIVE PRINCIPLES AND POLICIES OF THE STATE

#### 24. Application of Directive Principles and Policies

(1) The principles and policies contained in this Part shall not be enforceable in any court

(2) The principles and policies contained in this part shall be fundamental to the activities and governance of the State and shall be implemented in stages through laws within the limits of the resources and the means available in the country

#### 25. Directive Principles of the State

(1) It shall be the chief objective of the State to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life, including social, economic and political life, while at the same time protecting the lives, property and liberty of the people

(2) The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available means and resources of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public

(3) The social objective of the State shall be to establish and develop, on the foundation of justice and morality, a healthy social life, by eliminating all types of economic and social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races and communities

(4) It shall be the chief responsibility of the State to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralisation, and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society

(5) The State, in its international relations, shall be guided by the objective of enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independence of the country

**26 State Policies**

(1) The State shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country

(2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures

(3) The State shall pursue a policy of mobilising the natural resources and heritage of the country in a manner which might be useful and beneficial to the interest of the nation

(4) The State shall give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the protection of the rare wildlife, the forests and the vegetation

(5) The State shall create conditions for the economic progress of the majority of the people, who are dependent on agriculture, by introducing measures which will help in raising productivity in the agricultural sector and develop the agricultural sector on the principles of industrial growth by launching land reform programmes

(6) The State shall pursue a policy of increasing the participation of the labour force, the chief socio-economic force of the country, in the management of enterprises by gradually securing employment opportunities to it, ensuring the right to work, and thus protecting its rights and interests

(7) The State shall pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment

(8) The State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education

(9) The State shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons, as well as ensure their protection and welfare

(10) The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment

(11) The State shall, with a view to bringing about prosperity in the country, pursue a policy of giving priority to the development of science and technology and shall also give due consideration to the development of local technology.

(12) The State shall, for the purposes of national development, pursue a policy of taking measures necessary for the attraction of foreign capital and technology, while at the same time promoting indigenous investment

(13) The State shall pursue a policy of creating conditions for the acceleration of the speed of rural development, keeping in view the welfare of the majority of the rural population

(14) The State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law

(15) The foreign policy of Nepal shall be guided by the principles of the United Nations Charter, nonalignment, Panchsheel, international law and the value of world peace

(16) The State shall pursue a policy of making continuous efforts to institutionalise peace for Nepal through international recognition, by promoting cooperative and good relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world

## PART 5

### HIS MAJESTY

#### 27. His Majesty

(1) In this Constitution, the words "His Majesty" mean His Majesty the King for the time being reigning, being a descendant of the Great King Prithvi Narayan Shah and an adherent of Aryan Culture and the Hindu Religion

(2) His Majesty is the symbol of the Nepalese nationality and the unity of the Nepalese people

(3) His Majesty is to preserve and protect this Constitution by keeping in view the best interests and welfare of the people of Nepal

#### 28. Provision Relating to Succession to the Throne

(1) Nothing in this Constitution shall affect the custom, usage and tradition relating to the order of succession to the Throne by the descendants of His Majesty

(2) His Majesty shall have the exclusive power of enacting, amending and repealing the law relating to the succession to the Throne by His descendants

#### 29. Expenditures and Privileges relating to His Majesty and the Royal Family

Expenditures and privileges relating to His Majesty and the Royal Family shall be as determined by law

Provided that no law shall be made having the effect of reducing the expenditures and privileges being provided by the existing law

### 30. Income and Property of His Majesty to be Exempt from Tax and Inviolable

(1) The income and personal property of His Majesty shall be exempt from all kinds of tax, fee or other similar charge

(2) The property of His Majesty shall be inviolable

### 31. Question not to be Raised in Courts

No question shall be raised in any court about any act performed by His Majesty

Provided that nothing in this Article shall be deemed to restrict any right under law to initiate proceedings against His Majesty's Government or any employee of His Majesty

### 32. Royal Representative, Council of Royal Representatives, Regency and Council of Regency

(1) In this Constitution, any reference to His Majesty shall, unless the subject or context otherwise requires, include reference to a Royal Representative or Council of Royal Representatives exercising powers pursuant to clause (2), and to a Regent or Council of Regency empowered pursuant to Article 34

(2) His Majesty may, by warrant under His Royal Seal, appoint any person or council as His Royal Representative to exercise, subject to such conditions as may be specified in the warrant, such functions as His Majesty is to perform pursuant to this Constitution or the existing law during His Majesty's absence from Nepal or during any specified period. The functions exercised by such Royal Representative within the terms and limits specified in the warrant shall, for the purposes of this Constitution and existing laws, be deemed to have been exercised by His Majesty

### 33. Royal Standard and Salute

(1) Square in shape and crimson in colour having borders in white, the Royal standard is traditionally comprised of a crescent moon, in the upper corner near the flagstaff with eight out of sixteen rays shown in white colour, and a white sun with twelve white rays in the upper corner opposite to the flagstaff, and a white flag showing a six-angled figure and a sword in the middle of the standard with an upright white lion facing the flag with both its paws holding, and the right hind leg supporting, the flagstaff

(2) The national anthem of Nepal is the Royal salute

## PART 6

### RAJ PARISHAD

#### 34. Raj Parishad

(1) His Majesty shall constitute a Raj Parishad, the functions of which shall be as set forth in this Constitution

(2) The Raj Parishad shall consist of the following members

- (a) Members of the Royal Family as designated by His Majesty,
- (b) Prime Minister, *ex-officio* Member,
- (c) Chief Justice, *ex-officio* Member,
- (d) Speaker of the House of Representatives, *ex-officio* Member,
- (e) Chairman of the National Assembly, *ex-officio* Member,
- (f) Chairman of the Standing Committee of the Raj Parishad, *ex-officio* Member,
- (g) Deputy Prime Minister, *ex-officio* Member,
- (h) Ministers, *ex-officio* Member
- (i) Leader of the opposition in the House of Representatives, *ex-officio* Member,
- (j) Field Marshal, *ex-officio* Member,
- (k) Bada Gurujyu, *ex-officio* Member,
- (l) Commander-in-Chief, *ex-officio* Member,
- (m) Mukhya Shahebjiyu, *ex-officio* Member,
- (n) Chief Commissioner of the Commission for the Investigation of Abuse of Authority, *ex-officio* Member,
- (o) Auditor-General, *ex-officio* Member,
- (p) Chairman of the Public Service Commission, *ex-officio* Member,
- (q) Chief Election Commissioner, *ex-officio* Member,
- (r) Attorney-General, *ex-officio* Member,
- (s) Mukhya Chautariya, *ex-officio* Member,
- (t) Principal Secretary or Secretary of His Majesty, *ex-officio* Member,
- (u) Chief Secretary of His Majesty's Government, *ex-officio* Member,
- (v) Inspector General of Police, *ex-officio* Member, and
- (w) Such other members as His Majesty may designate from among persons who, being renowned in different fields of national life, or who, having rendered distinguished service, are considered fit to be members of the Raj Parishad

(3) Persons designated by His Majesty pursuant to sub-clause (a) and (w) of clause (2) shall remain members during the pleasure of His Majesty

(4) A meeting of the Raj Parishad shall be summoned by the command of His Majesty, and shall be presided over by Him if present at the meeting. If His Majesty is not present at the meeting, and if the Crown Prince has attained the age of eighteen years, the meeting shall be presided over by the Crown Prince, such, and if the Crown Prince has not attained the age of eighteen years, or if He is not present, the meeting shall be presided over by such person as is designated by His Majesty shall so preside, and if no such person has been designated, by the Chairman of the Standing Committee of the Raj Parishad

(5) The Chairman of the Standing Committee of the Raj Parishad shall summon a meeting of the Raj Parishad in the following circumstances and such meeting shall be conducted under his Chairmanship

(a) on the demise of His Majesty or if His Majesty proclaims His abdication

(b) if at least one-fourth of the total number of members of the Raj Parishad sign a requisition declaring that His Majesty is unable, by reason of mental or physical infirmity, to perform his functions

(6) A meeting summoned under the circumstances mentioned in sub-clause (a) of clause (5) shall proclaim the accession to the Throne of the heir-apparent to His Majesty in accordance with the law, custom and usage relating to the succession to the Throne. It shall also proclaim the appointment of a Regent or Council of Regency, subject to rules made by His Majesty, in case His Majesty is below the age of eighteen years

Provided that the Regency or Council of Regency proclaimed under this clause shall dissolve on His Majesty attaining the age of eighteen years

(7) If a meeting of the Raj Parishad, summoned under sub-clause (b) of clause (5) with the object of deciding whether His Majesty is mentally or physically incapacitated, passes a resolution confirming such incapacity by a majority of two-thirds of its total membership, the meeting of the Raj Parishad shall proclaim the Crown Prince to be the Regent if He has attained the age of eighteen years, and in other circumstances, it shall, subject to rules made by His Majesty, proclaim a Regent or Council of Regency

Provided that the Regency or Council of Regency proclaimed under this clause shall, subject to rules made by His Majesty, dissolve on the demise of or abdication by His Majesty, or on His Majesty informing the Raj Parishad that he is fit to resume the Royal functions

(8) A Regent or Council of Regency proclaimed under clauses (6) or (7) shall not have any power to decide or to give approval to anything which shall be prejudicial to the interest of His Majesty or His successor

(9) Nothing in clauses (6) and (7) shall prevent the heir-apparent to His Majesty from exercising the powers of the Throne pending a proclamation to that effect

(10) The Raj Parishad shall transact its business notwithstanding the absence of any of its members at any meeting if

(a) notice of such meeting has been sent to all persons who were members on the date of issuance of the notice, and

(b) at least one-third of the total number of members are present

(11) The Raj Parishad may make necessary rules to regulate its business until such rules are made, its business shall be regulated by rules made by His Majesty.

(12) Members of the Raj Parishad shall take an oath in the manner as specified by His Majesty

(13) His Majesty shall appoint the Secretary of the Raj Parishad

(14) His Majesty may, from among the members of the Raj Parishad, constitute a Standing Committee of the Raj Parishad, consisting of a maximum of fifteen members including a Chairman and the following ex-officio members

- (a) Prime Minister,
- (b) Chief Justice,
- (c) Speaker of the House of Representatives,
- (d) Chairman of the National Assembly,
- (e) Bada Gurujyu, and
- (f) Commander-in-Chief

(15) The tenure of office of the Chairman and the members of the Standing Committee of the Raj Parishad other than the ex-officio members shall be four years from the date of appointment. Such members shall be eligible for reappointment.

(16) The office of the Chairman or a member of the Standing Committee of the Raj Parishad shall be deemed vacant under the following circumstances:

- (a) if he dies, or
- (b) if he is relieved of office by His Majesty,
- (c) if his resignation submitted to His Majesty in writing is accepted by Him,
- (d) if his term of office expires pursuant to clause (15)

(17) In order to be eligible for appointment as the Chairman or a member of the Standing Committee of the Raj Parishad, a person must meet the following requirements:

- (a) he has reached the age of fifty years,
- (b) he is not disqualified under any law

(18) The functions, duties and power of the Standing Committee of the Raj Parishad shall be as follows:

- (a) to submit recommendations on matters referred to it by His Majesty, and
- (b) to carry out the functions relating to the Royal Family as specified by His Majesty

(19) The Standing Committee of the Raj Parishad may, subject to the provisions of this Article, frame necessary rules to regulate its business. Until such time as these rules are approved by His Majesty, this business shall be regulated by rules made by His Majesty.

(20) The remuneration of the Chairman and the members of the Standing Committee of the Raj Parishad shall be as fixed by His Majesty.

(21) The meetings of the Standing Committee of the Raj Parishad shall be summoned by its Chairman. During discussions on any issue at such meetings, any other member of the Raj Parishad may also be invited.

(22) The Secretary of the Raj Parishad shall also act as the Secretary of its Standing Committee.

(23) The members of the Standing Committee of the Raj Parishad shall take an oath in the manner as specified by His Majesty.

**PART 7**  
**EXECUTIVE**

**35. Executive Power**

(1) The executive power of the Kingdom of Nepal shall, pursuant to this Constitution and other laws, be vested in His Majesty and the Council of Ministers

(2) Except as otherwise expressly provided as to be exercised exclusively by His Majesty or at His discretion or on the recommendation of any institution or official, the powers of His Majesty under this Constitution shall be exercised upon the recommendation and advice and with the consent of the Council of Ministers. Such recommendation, advice and consent shall be submitted through the Prime Minister

(3) The responsibility of issuing general directives, controlling and regulating the administration of the Kingdom of Nepal shall, subject to this Constitution and other laws, lie in the Council of Ministers

(4) Except in so far as any action is to be taken in the name of His Majesty pursuant to this Constitution and other laws, all other executive actions shall be expressed to be taken in the name of His Majesty's Government

(5) Any decision, order or implementation warrant to be issued in the name of His Majesty pursuant to this Constitution and other laws shall be authenticated in such manner as may be set forth in rules made by His Majesty at His discretion. All other decisions, orders and implementation warrants to be issued in the name of the Council of Ministers pursuant to clause (4) above shall be authenticated in such manner as may be set forth in rules approved by His Majesty

(6) No question shall be raised in any court as to whether or not any recommendation or advice has been given to His Majesty pursuant to this Constitution by the Council of Ministers or any other institution or official, nor shall any question be raised in any court about what recommendation or advice has been given

**36. Constitution of Council of Ministers**

(1) His Majesty shall appoint the leader of the party which commands a majority in the House of Representatives as the Prime Minister, and shall constitute the Council of Ministers under his chairmanship

(2) The Council of Ministers, in addition to the Prime Minister, shall consist of a Deputy Prime Minister if required and such other Ministers as may be required

(3) His Majesty shall, upon the recommendation of the Prime Minister, appoint from among the members of the Parliament, a Deputy Prime Minister if required and such other Ministers as may be required

(4) The Prime Minister and other Ministers shall be collectively responsible to the House of Representatives, and the Ministers shall be

individually responsible for the work of their respective Ministries to the Prime Minister and the House of Representatives

(5) The Prime Minister shall be relieved of his office in the following circumstances

(a) if his resignation submitted to His Majesty in writing is accepted by Him, or

(b) if His Majesty relieves him of office in accordance with a no confidence resolution passed by a majority of the total number of members of the House of Representatives pursuant to Article 59, or

(c) if he ceases to be a member of the House of Representatives, or

(d) if he dies

(6) The Deputy Prime Minister or a Minister shall be relieved of his office in the following circumstances

(a) if his resignation submitted to His Majesty in writing through the Prime Minister is accepted by Him, or

(b) if the Prime Minister is relieved of his office pursuant to the provisions of clause (5) above, or

(c) if he ceases to be a member of Parliament, or

(d) if he is relieved of office by His Majesty on the recommendation of the Prime Minister, or

(e) if he dies

(7) If the Prime Minister is relieved of his office pursuant to clause (5), the existing Council of Ministers shall continue to function until a new Council of Ministers is constituted

Provided that His Majesty shall, upon the death of the Prime Minister, designate either the Deputy Prime Minister or the seniormost Minister to act as the Prime Minister until a new Prime Minister is appointed

### **37. State Ministers and Assistant Ministers**

(1) His Majesty shall, on the recommendation of the Prime Minister, appoint State Ministers from amongst the members of Parliament

(2) His Majesty shall, upon the recommendation of the Prime Minister, appoint Assistant Ministers from amongst the members of Parliament to assist any Minister in carrying out his responsibilities

(3) The provisions of clause (6) of Article 36 relating to Ministers shall also be applicable to State Ministers and Assistant Ministers

### **38. Appointment of Non-Member of Parliament as Minister**

Notwithstanding anything contained in Articles 36 and 37, any person who is not a member of either House of Parliament may be appointed Deputy Prime Minister, Minister, State Minister or Assistant Minister

Provided that such Deputy Prime Minister, Minister, State Minister or Assistant Minister shall be required to become a member of Parliament within six months from the date of his appointment

**39. Remuneration and Other Privileges**

The remuneration and other privileges of the Prime Minister, Deputy Prime Minister, Ministers, State Ministers and Assistant-Ministers shall be as determined by an Act, and until so determined, shall be as specified in rules made by His Majesty

**40. Oath**

The Prime Minister, Deputy Prime Minister, and other Ministers shall take their oath of office and secrecy before His Majesty, and the State Ministers and Assistant Ministers before the Prime Minister

**41. Conduct of Government Business**

(1) The allocation and transaction of business of His Majesty's Government shall be carried out as set forth in rules approved by His Majesty

(2) No question shall be raised in any court as to whether or not rules made pursuant to clause (1) above have been observed

**42. Special Provisions Concerning the Council of Ministers**

(1) If no one party has a clear majority in the House of Representatives, His Majesty shall appoint as Prime Minister a member who is able to command a majority with the support of two or more parties represented in the House

(2) If no member is able to command a majority in the House of Representatives even pursuant to clause (1) above, His Majesty shall appoint as Prime Minister the leader of the parliamentary party that holds the largest number of seats in the House of Representatives

(3) A Prime Minister appointed pursuant to clause (1) or (2) above shall be required to obtain a vote of confidence from the House of Representatives within thirty days

(4) If a Council of Ministers appointed pursuant to the provisions of clause (2) above fails to obtain a vote of confidence from the House of Representatives, His Majesty shall dissolve the House of Representatives and issue an order for holding elections within six months

**43. Information to be submitted to and Recommendations to be made by His Majesty**

(1) It shall be the duty of the Prime Minister to inform His Majesty of the following matters

(a) decisions of the Council of Ministers regarding the administration of the Kingdom of Nepal,

(b) Bills to be introduced in Parliament,

(c) such other information as commanded by His Majesty on matters mentioned in sub-clauses (a) and (b), and

(d) the current general state of affairs of the country, matters concerning peace and security in the country, matters of political, social and administrative concerns, and matters concerning international relations

(2) His Majesty may make recommendations to, or appreciations of, or admonitions to, the Council of Ministers on matters of national importance

## PART 8

### LEGISLATURE

#### 44. Constitution of Legislature

There shall be a Legislature, to be called Parliament, which shall consist of His Majesty and two Houses, namely the House of Representatives and the National Assembly.

#### 45. Constitution of the House of Representatives

(1) The House of Representatives shall consist of two hundred and five members

(2) For the purpose of election of members to the House of Representatives, administrative districts shall be treated as election districts, and the ratio of the number of seats allocated to any district shall be, so far as practicable, equal to the ratio of the population of that district to the national population as determined by the last census preceding the concerned election and the number of election constituencies shall be equal to the number of seats so allocated, and one member shall be elected from each election constituency

Provided that the number of members to be elected from the districts shall be so determined and election constituency so delimited that there be elected at least one member from each district irrespective of its population

(3) Unless dissolved earlier pursuant to the provisions of this Constitution, the term of the House of Representatives shall be five years

Provided that the term of the House of Representative may be extended by an Act for a period not exceeding one year during the operation of a proclamation of a state of Emergency

(4) The term of the House of Representatives as extended in pursuance of the proviso clause of clause (3) shall ipso facto stand terminated after the expiry of six months from the date on which the proclamation of the state of Emergency is withdrawn

(5) Subject to the provisions of this Constitution, election to membership in the House of Representatives shall be held on the basis of one man-one vote through secret ballots in accordance with the provisions of law

(6) Every Nepali citizen who has attained the age of eighteen shall be entitled to vote in one of the election constituencies in accordance with the provisions of law

(7) Every person who is entitled to vote in the elections for the House of Representatives may, subject to the provisions of Article 47 and other existing laws, be a candidate from any of the election constituencies

(8) Any vacancy in a seat occurring in the House of Representatives, while a portion of its term still remains shall be filled through a by-election

(9) Subject to the provisions of this Article, elections for the House of Representatives and other matters pertaining thereto shall be regulated in accordance with law.

#### 46. Constitution of the National Assembly and the Tenure of Office of Members

(1) The National Assembly shall consist of sixty members as follows.—

(a) ten members to be nominated by His Majesty from amongst persons of high reputation who have rendered prominent service in various fields of national life

(b) thirty five members, including at least three women members, to be elected by the House of Representatives in accordance with the provisions of law on the basis of the system of proportional representation by means of the single transferable vote, and

(c) fifteen members, three from each of the Development Regions, to be elected in accordance with law on the basis of the system of single transferable vote by an electoral college consisting of the Chief and the Deputy-Chief of the village and town level local authorities and the Chief Deputy-Chief and the members of the district level local authorities.

Provided that until elections are held for the local authorities such electoral college shall for the first time, consist of the members of the House of Representatives elected from the concerned Development Region

(2) The National Assembly shall be a permanent House. The tenure of office of one-third of its members shall expire every two years

(3) The tenure of office of the members of the National Assembly shall be six years

Provided that for the first time, after the commencement of this Constitution, arrangements shall be made by drawing lots to retire one-third of the members on the expiry of two years, another one-third on the expiry of four years and the final one-third on the expiry of six years

(4) The term of office of the members including any unfilled seats shall be deemed to have started on the date on which National Assembly commences its first session

(5) Vacancies of seats in the National Assembly shall be filled in the same manner of election or nomination through which the seat of the vacating member was filled

(6) If any seat of a member of the National Assembly falls vacant during his tenure of office, the vacancy shall be filled in accordance with clause (5). In case of election or nomination as the case may be for the remainder of the term

#### 47. Qualifications for Membership

(1) In order to become a member of Parliament any person

(a) must be a citizen of Nepal,

(b) must have attained twenty five years of age for the House of Representatives and thirty five years for the National Assembly

- (c) should not be disqualified under any law; and
- (d) should not hold an office of profit.

*Explanation.*—For the purpose of this sub-clause, "office of profit" means any position, other than a political position, to be filled by election or nomination for which a remuneration or economic benefit is paid out of a Government Fund.

- (2) No person shall be a member of both Houses simultaneously.

#### 48. Decision About Disqualifications of Members

If a question arises as to whether a member of Parliament is disqualified or has ceased to possess any of the qualifications set forth in Article 47, the final decision shall be made by the Chief Justice of Nepal or any other Judge of the Supreme Court designated by him.

#### 49. Vacation of seat

(1) The seat of a member of Parliament shall become vacant in the following circumstances:

- (a) if he dies; or
- (b) if he resigns in writing; or
- (c) if he does not or has ceased to possess the qualifications referred to in Article 47; or
- (d) if his term of office expires, or if the term of the House is accordance with this Constitution; or
- (e) if he, without the leave of the concerned House, absents himself from thirty consecutive meetings of the House; or
- (f) if the party of which he was a member when elected provides notification in the manner set forth by law that he has abandoned the party.

#### 50. Oath

The members of each House of Parliament shall, before taking part for the first time in a meeting of that House or any of its committees, take an oath in the specified form.

#### 51. Speaker and Deputy-Speaker of the House of Representatives

(1) The House of Representatives shall, as soon as possible, elect a Speaker and a Deputy Speaker from among its members. If the office of the Speaker or the Deputy Speaker falls vacant, the House of Representatives shall fill the vacancy through election from among its members.

(2) The Deputy Speaker shall, in the absence of the Speaker of the House of Representatives, chair the House of Representatives.

(3) If the election of the Speaker and Deputy Speaker has not taken place, or if both the positions have become vacant, the member of the House of Representatives who is by age the senior-most shall preside over the meeting of the House of Representatives.

(4) The Office of the Speaker or the Deputy Speaker shall become vacant in the following circumstances

(a) if he ceases to be a member of House of Representatives

Provided that, after the dissolution of the House of Representatives, the Speaker and Deputy-Speaker shall continue in office until the date of the filing of nominations for election to the House of Representatives; or

(b) he submits a written resignation, or

(c) if a resolution is passed by a majority of two-thirds of the total number of members in the House of Representatives to the effect that his conduct is not compatible with his position

(5) The Deputy Speaker shall preside over a meeting at which deliberations are to be held on a resolution that the conduct of the Speaker of the House of Representatives is not compatible with his position. The Speaker shall be entitled to take part and vote in the deliberations on such resolution.

## 52. Chairman and Vice-Chairman of the National Assembly

(1) After the commencement of its first session, the National Assembly shall, as soon as possible, elect a Chairman and Vice-Chairman from among its members. If the office of the Chairman or the Vice-Chairman falls vacant, the National Assembly shall fill the vacancy through election from among its members.

(2) The Vice-Chairman shall, in the absence of the Chairman of the National Assembly, chair the National Assembly.

(3) If the election of the Chairman and Vice-Chairman has not taken place, or if both the positions have become vacant, the member of the National Assembly who is by age the seniormost shall preside over the meeting of the National Assembly.

(4) The office of the Chairman or the Vice-Chairman shall become vacant in the following circumstances

(a) if he ceases to be a member of the National Assembly, or

(b) if he submits a written resignation, or

(c) if a resolution is passed by a majority of two-thirds of the total number of members of the National Assembly to the effect that his conduct is not compatible with his position.

(5) The Vice-Chairman shall preside over a meeting at which deliberations are to be held on a resolution that the conduct of the Chairman of the National Assembly is not compatible with his position. The Chairman shall be entitled to take part and vote in the deliberations on such resolution.

## 53. Summoning and Prorogation of Sessions and Dissolution of the House of Representatives

(1) His Majesty shall summon a session of parliament within one month after the elections to the House of Representatives are held. Thereafter, His Majesty shall summon other sessions from time to time in accordance with the Constitution.

Provided that the interval between two consecutive sessions shall not be more than six months

(2) His Majesty may prorogue the session of both or either of the Houses of Parliament

(3) If, during the prorogation or recess of the House of Representatives, one-fourth of its members make a representation that it is appropriate to convene a session or meeting, His Majesty shall specify the date and time for such session or meeting, and the House of Representatives shall meet or commence its session on the date and time thus fixed

(4) His Majesty may dissolve the House of Representatives on the recommendation of the Prime Minister His Majesty shall, when so dissolving the House of Representatives, specify a date, to be within six months, for new elections to the House of Representatives

#### **54. Address and Message by His Majesty**

(1) His Majesty may address either House or a joint sitting of both the Houses of Parliament, and He may summon the Members for that purpose

(2) His Majesty shall address the first session after an election to the House of Representatives, and a joint sitting of both the Houses of Parliament after the commencement of the first session of each year

(3) His Majesty may send messages to either or both the Houses of Parliament The House receiving such message shall, as early as possible, consider the matter mentioned in the message and submit its opinion to His Majesty

#### **55. Quorum**

Except as otherwise provided in this Constitution, no resolution shall be presented for decision in either House of Parliament unless one-fourth of the total number of members of the concerned House are present

#### **56. Restriction on Discussion**

(1) No discussion shall be held in either House of Parliament on the conduct of His Majesty, Her Majesty the Queen and the heir apparent to His Majesty

Provided that nothing in this Article shall be deemed to bar criticism of His Majesty's Government

(2) No discussion shall be held in either House of Parliament on a matter which is under consideration in any court of Nepal

(3) No discussion shall be held in either House of Parliament about anything done by a Judge in course of performance of his duties

Provided that nothing in this clause shall be deemed to bar the expression of opinion about the conduct of a Judge during deliberations on a resolution held pursuant to clause (7) of Article 87

#### **57. Transaction of Business in case of Vacancy of Members**

Either House of Parliament shall have the power to transact its business

notwithstanding any vacancies in the seats of its members; and no proceedings shall become invalid even if it is subsequently discovered that a person not entitled to take part in the proceedings of either House had participated therein

#### 58. Voting

Except as otherwise provided in this Constitution, all questions submitted for decision in either House of Parliament shall be decided by a majority vote of the members present and voting. Normally the member presiding shall not have the right to vote, but he may exercise his casting vote in the case of tie.

#### 59. Vote of Confidence

(1) The Prime Minister, while he holds office, may whenever he is of the opinion that it is necessary or appropriate to obtain a vote of confidence from the members of the House of Representatives, present a resolution to that effect in the House of Representatives.

(2) One-fourth of the total number of members of the House of Representatives may present in writing a no-confidence motion against the Prime Minister.

Provided that a no-confidence motion shall not be presented more than once in the same session.

(3) A decision on a resolution presented pursuant to clauses (1) and (2) shall be made by a majority of the total number of members of the House of Representatives.

#### 60. Minister entitled to Take Part in Both Houses

A Minister shall be entitled to attend and take part in the proceedings and deliberations of either House of the Parliament and its committees.

Provided that he shall not be entitled to vote in a House or committee of which he is not a member.

#### 61. Penalty for Unauthorized Presence or Voting

If a person sits or votes in a meeting of either House of Parliament as a member without taking an oath pursuant to Article 50, or knowing that he is not qualified for membership in the House, he shall, on order of the person chairing the House, be liable to a fine of one thousand rupees for each day of such presence or voting. The fine shall be recovered as government dues.

#### 62. Privileges

(1) Subject to the provisions of this Constitution, there shall be full freedom of speech in both Houses of Parliament and no member shall be arrested, detained or prosecuted in any court for anything said or any vote cast in the House.

(2) Subject to the provisions of this Constitution, each House of Parliament shall have full power to regulate its internal business, and it shall be the exclusive right of the House concerned to decide whether or not any

proceeding of the House is regular. No question shall be raised in any court in this regard.

(3) Subject to the provisions of this Constitution, no comment shall be made about the good faith concerning any proceeding of either House of Parliament and no publication of any kind shall be made about anything said by any member which intentionally distorts or misinterprets the meaning of the speech.

(4) Subject to the provisions of this Constitution, the provisions of clauses (1) and (3) shall also apply to any person, other than a member, who is entitled to take part in a meeting of the House.

(5) No proceedings shall be initiated in any court against any person for publication of any document, report, vote or proceeding which is made under authority given, subject to the provisions of this Constitution, by a House of Parliament.

Explanation.—For the purposes of this clause and clauses (1), (2) (3) and (4), the word "House" shall mean and include the committees of a House and shall also mean a joint sitting of Parliament or a meeting of the Joint Committee.

(6) No member of Parliament shall be arrested between the date of issuance of the summons for a session and the date on which that session closes

Provided that nothing in this clause shall be deemed to prevent the arrest under any law of any member on a criminal charge. If any member is so arrested, the official making such arrest shall forthwith inform the person chairing the concerned House.

(7) Any breach of privilege of either House of Parliament shall be deemed to constitute contempt of Parliament and the concerned House shall have the exclusive right to decide whether or not any breach of privilege has taken place.

(8) If a person is in contempt of either House of Parliament, the Chairperson of the concerned House may, after a decision by the House to that effect, admonish, warn or impose a sentence of imprisonment not exceeding three months, to remain effective only during the current session of the House, or impose a fine of up to five thousand rupees on such person. The fine shall be recovered as government dues.

Provided that if the person so accused submits an apology to the satisfaction of the House, it may either pardon him or remit or commute the sentence imposed on him.

(9) Other matters relating to privileges not mentioned in this Constitution shall be as determined by law.

### 63. Procedures relating to the Conduct of Business

(1) Each House of Parliament shall, subject to the provisions of this Constitution, frame rules for conducting its business, maintaining order during its meetings and regulating the constitution, functions and procedures

of the committees or any other matter of the House or the committees Such rules shall come into effect upon approval by His Majesty

(2) Matters relating to the conduct of business of a joint sitting of Parliament and the constitution of its Joint Committee, and the functions and procedures thereof shall be in accordance with rules made by His Majesty on the recommendation of the Speaker of the House of Representatives and the Chairman of the National Assembly

(3) Until such time as rules mentioned in clauses (1) and (2) are made, matters mentioned in those clauses shall be governed by rules made by His Majesty

#### 64 Committees

The House of Representatives may, by rules, regulate the constitution and management of Committees on Finance, Public Account, Human Rights, Foreign Relations, Natural Resources, Protection of the Environment, Population and such committees on other subjects as required

#### 65. Joint Committee

(1) If a resolution is passed by either House demanding that of both the Houses be constituted for the purpose of managing the working procedure between the two Houses, resolving disagreements on any Bill, or for any other specified function, a Joint Committee thereon shall be constituted

(2) The Joint Committee shall consist of up to a maximum of fifteen members in the ratio of two members from the House of Representatives to one member from the National Assembly

#### 66. Secretariat of Parliament

(1) His Majesty shall appoint the Secretary of the House of Representatives on the recommendation of its Speaker, and the Secretary of the National Assembly on the recommendation of its Chairman and the Secretary General of Parliament in consultation with both the Speaker and the Chairman

(2) The establishment of a Secretariat for the purpose of conducting the business of Parliament and other matters related thereto shall be as determined by law

#### 67 Remuneration

The remuneration and privileges of the Speaker and Deputy Speaker of the House of Representatives, the Chairman and Vice-Chairman of the National Assembly and members of Parliament shall be determined by law, and until so determined, shall be as specified by His Majesty

## PART 9

## LEGISLATIVE PROCEDURE

## 68. Procedure for Introducing a Bill

(1) A bill may be introduced in either House of Parliament

*Provided that a Finance Bill shall be introduced only in the House of Representatives*

(2) A Finance Bill or a Bill concerning the Royal Nepal Army or the Armed Police Force shall be introduced only as a Government Bill. Any amendment to such Bill may be introduced only upon the prior approval of His Majesty. Such approval shall be obtained through the person chairing the House

(3) "Finance Bill" means a Bill concerning any or all of the following subjects

(a) the imposition, collection, abolition, remission, alteration or regulation of taxes,

(b) the preservation of the Consolidated Fund or any other Government Fund, the deposit of moneys into and the appropriation or the withdrawal of moneys from such Funds, or the reduction, increment or cancellation of appropriations or of proposed expenditures from such Funds,

(c) the regulation of matters relating to the raising of loans or the giving of guarantees by His Majesty's Government or any matter pertaining to amendment of the laws concerning the financial liabilities undertaken or to be undertaken by His Majesty's Government,

(d) the custody and investment of all revenues received by any Government Fund, moneys acquired through the repayment of loans and grant moneys, or audits of the accounts of His Majesty's Government, or

(e) matters directly related to the above subjects

(4) If any question arises whether a Bill is a Finance Bill or not, the decision of the Speaker shall be final

## 69. Procedure for Passage of Bills

(1) A Bill passed by one House of Parliament shall be transmitted to the other House as soon as possible and such Bill, if passed by the receiving House, shall be presented to His Majesty for assent

(2) A Finance Bill passed by the House of Representatives shall be transmitted to the National Assembly. The National Assembly shall, after deliberations on such a Bill, send back the Bill to the House of Representatives within fifteen days from the date of receipt of the Bill with recommendations if any

(3) The House of Representatives shall, upon deliberations on a Bill returned with recommendations pursuant to clause (2), present it to His

Majesty for assent along with such recommendations as it may deem appropriate

(4) If the National Assembly does not return a Bill received pursuant to clause (2) for more than fifteen days, the House of Representatives may present the Bill to His Majesty for assent

(5) Any Bill, except for a Finance Bill, passed by the House of Representatives and transmitted to the National Assembly shall be sent back with approval or recommendations within two months from the date of receipt. If the National Assembly does not return the Bill within that period, the House of Representatives may, by a resolution passed by a majority of more than fifty per cent of the sitting members, present the Bill to His Majesty for assent

(6) If any Bill passed by one House is rejected or is passed with amendments by the other House, the Bill shall be transmitted back to the House where it originated

(7) If the House of Representatives, in considering a Bill which has been rejected or amended by the National Assembly pursuant to clause (6), passes it again as it was or with amendments, by a majority of more than fifty per cent of its sitting members, the Bill shall be presented to His Majesty for assent

(8) A Bill for which amendments have been recommended and which has been transmitted to the National Assembly by the House of Representatives pursuant to clause (6) shall be presented to His Majesty for assent if the National Assembly also passes a resolution to adopt the Bill with such amendments

(9) The following Bills shall be referred to a joint sitting of the two Houses and if the joint sitting passes the Bill as it was or with amendments, the House in which the Bill originated shall present it to His Majesty for assent —

(a) Bills which, though being passed by the National Assembly, have been rejected by the House of Representatives, or

(b) Bills which have been returned to the National Assembly with amendments by the House of Representatives, but which the National Assembly fails to pass with such amendments

(10) If a session of a House terminates while a Bill is under consideration, deliberations on the Bill may continue at the succeeding session

Provided that if any Bill introduced in the House of Representatives is under consideration, or if a Bill, having been passed by that House and transmitted to the National Assembly, is under consideration in the National Assembly, when the House of Representatives is dissolved or its term expires, such Bill shall be deemed to have lapsed

#### 70. Withdrawal of Bills

A Bill may be withdrawn by the member introducing it with the approval of the House

### 71. Assent on Bills

(1) A Bill which is to be presented to His Majesty for assent pursuant to Article 69 shall be so presented by the Speaker or the Chairman of the House in which the Bill originated after it has been duly certified by him under his hand

*Provided that in the case of a Finance Bill, the Speaker shall so certify*

(2) Upon His Majesty's assent to any Bill that has been presented to Him pursuant to this Article, both Houses shall be informed as soon as possible

(3) Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, he may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him

(4) If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and it is again presented to him, His Majesty shall give assent to that Bill within thirty days of such presentation

(5) A Bill shall become an Act after His Majesty grants his assent to it in accordance with this Article, and such assent shall be deemed to have been granted after the Royal Seal has been affixed thereon

### 72. Ordinance

(1) If at any time, except when both Houses of Parliament are in session, His Majesty is satisfied that circumstances exist which render it necessary for him to take immediate action, He may, without prejudicing the provisions set forth in this Constitution, promulgate any Ordinance as He may deem necessary

(2) An Ordinance promulgated under clause (1) shall have the same force and effect as an Act

*Provided that every such Ordinance*

(a) shall be presented at the next session of both Houses of Parliament, and if not passed by both Houses, it shall ipso facto cease to be effective,

(b) may be repealed at any time by His Majesty, and

(c) shall, unless rendered ineffective or repealed under sub-clause (a) or (b), ipso-facto cease to have effect at the expiration of six months from its promulgation or sixty days from the commencement of a session of both the Houses

*Explanation*—If the two Houses of Parliament meet on different dates, the latter date on which a House commences its session shall be deemed to be the date of commencement of session for the purpose of computation of time under this clause

**PART 10**  
**FINANCIAL PROCEDURE**

**73. No Tax to be Levied or Loan to be Raised Except in Accordance with Law**

- (1) No tax shall be levied and collected except in accordance with law
- (2) No loan shall be raised or guarantee be given by His Majesty's Government except in accordance with law

**74. Consolidated Fund**

Except the revenues of religious endowments, all revenues received by His Majesty's Government, all loans raised on the security of revenues and all moneys received in repayment of any loan made under the authority of any Act shall, unless otherwise provided by an Act, be credited to a Government Fund to be known as the Consolidated Fund

**75. Expenditures From the Consolidated Fund or a Government Fund**

No expenditure shall be incurred out of the Consolidated Fund or any other Government Fund except the following —

- (a) moneys charged on the Consolidated Fund,
  - (b) moneys required to meet the expenditure under an Appropriation Act,
  - (c) advance moneys authorised by an Act required to meet expenditures, when an Appropriation Bill is under consideration, or
  - (d) expenditures to be incurred in extraordinary circumstances under a Vote of Credit Act which contains only a description of expenditures
- Provided that matters relating to the Contingency Fund shall be governed in accordance with the provisions of Article 82

**76. Expenditure Chargeable on the Consolidated Fund**

The expenditures related to the following matters shall be charged on the Consolidated Fund and yearly approval of Parliament for these expenditures shall not be required

- (a) the amount provided by the Act relating to expenditures on the Royal Family,
- (b) the amount required as remuneration, privileges and pension payable to the Chief Justice of Nepal and other Judges of the Supreme Court,
- (c) the amount required as remuneration and privileges payable to the following officials
  - (1) the Speaker and Deputy Speaker of the House of Representatives,
  - (2) the Chairman and Vice-Chairman of the National Assembly,
  - (3) the Chairman and members of the Standing Committee of the Raj Parishad,

(4) the Chief Commissioner and other Commissioners of the Commission for the Investigation of the Abuse of Authority,

(5) the Auditor-General,

(6) the Chairman and members of the Public Service Commission, and

(7) the Chief Election Commissioner and other Election Commissioners

(d) the administrative expenses of the Supreme Court, the Raj Parishad, the Commission for the Investigation of the Abuse of Authority, the Department of the Auditor-General, the Public Service Commission and the Election Commission,

(e) all charges relating to debts for which His Majesty's Government is liable,

(f) any sum required to satisfy any judgment or decree of a court against His Majesty's Government, and

(g) any sum declared by law to be chargeable on the Consolidated Fund

#### **77. Estimates of Revenues and Expenditures**

(1) His Majesty shall, in respect of every financial year, cause to be laid before a joint sitting of Parliament an annual estimate including the following matters

(a) an-estimate of revenues,

(b) the moneys required to meet the charges on the Consolidated Fund, and

(c) the moneys required to meet the expenditure to be provided for by an Appropriation Act

(2) The annual estimate to be presented pursuant to clause (1) above should be accompanied by a statement of the expenses allocated to each Ministry in the previous financial year and particulars of whether the objectives of the expenses have been achieved

#### **78. Appropriation Act**

The moneys required to meet the expenditure to be provided for by any Appropriation Act shall be specified under appropriate heads in an Appropriation Bill

#### **79. Supplementary Estimates**

(1) His Majesty shall, in respect of any financial year, cause to be laid before the House of Representatives a supplementary estimate if it is found.

(a) that the sum authorised to be spent for a particular service by the Appropriation Act for the current financial year is insufficient, or that a need has arisen for expenditures upon new services not provided for by the Appropriation Act for that year, or

(b) that the expenditures made during that financial year are in excess of the amount authorised by the Appropriation Act

(2) The sums included in the supplementary estimates shall be specified under separate heads in a Supplementary Appropriations Bill

#### **80. Votes of Credit**

(1) Notwithstanding anything contained in this Part, a portion of the expenditure estimated for the financial year may, when an Appropriation Bill is under consideration, be incurred in advance by an Act

(2) A Vote on Account Bill shall not be submitted until the estimates of revenues and expenditures have been presented in accordance with the provisions of Article 77 and the amounts involved in the Vote on Account shall not exceed one-third of the estimate of expenditures for the financial year

(3) The expenditures incurred in accordance with the Vote on Account Act shall be included in the Appropriation Bill

#### **81. Votes of Credit**

Notwithstanding anything contained in this Part, if owing a local or national emergency due to either natural cause, a threat of external aggression or internal disturbances, or other reasons, His Majesty is of the opinion that it is impractical or inexpedient in view of the security or interest of the State to specify the details required under Article 77, He may cause to be laid before the House of Representatives a Vote of Credit Bill giving only a description of the proposed expenditures

#### **82. Contingency Fund**

An Act may create a Contingency Fund into which shall be paid from time to time such moneys as may be determined by law. Such Fund shall be under the control of His Majesty's Government, and any unforeseen expenditures shall be met out of such Fund by His Majesty's Government. The amount of the expenditures so met shall be reimbursed as soon as possible by an Act

#### **83. Act Relating to Financial Procedure**

Matters relating to the transfer of moneys appropriated from one head to another and other financial procedures shall be regulated by an Act

### **PART 11 JUDICIARY**

#### **84. Courts to Exercise Powers Related to Justice**

Powers relating to Justice in the Kingdom of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice

**85. Courts of Kingdom of Nepal**

(1) Courts in the Kingdom of Nepal shall consist of the following three tiers

- (a) Supreme Court,
- (b) Appellate Court, and
- (c) District Court

(2) In addition to the courts referred to in clause (1) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases

Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case.

**86. Supreme Court**

(1) The Supreme Court shall be the highest court in the judicial hierarchy. All other courts and judicial institutions of Nepal, other than the Military Court, shall be under the Supreme Court. The Supreme Court may inspect, supervise and give directives to its subordinate courts and other judicial institutions.

(2) The Supreme Court shall be a Court of Record. It may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial institutions.

(3) The Supreme Court shall, in addition to the Chief Justice of Nepal, consist of up to a maximum of fourteen other Judges. If at any time, the number of existing Judges becomes insufficient due to an increase in the number of cases in the Supreme Court, ad hoc Judges may be appointed for a fixed term.

**87. Appointment, Qualifications and Conditions of Service of Judges of the Supreme Court**

(1) His Majesty shall appoint the Chief Justice of Nepal on the recommendation of the Constitutional Council, and other Judges of the Supreme Court on the recommendation of the Judicial Council. The tenure of office of the Chief Justice shall be seven years from the date of appointment.

(2) Any person who has worked as a Judge of the Supreme Court for at least five years is eligible for appointment as Chief Justice.

(3) Any person who has worked as a Judge of an Appellate Court or in any equivalent post of the Judicial Service for at least ten years, or has practised law for at least fifteen years as a law graduate advocate or senior advocate, or who is a distinguished jurist who has worked for at least fifteen years in the judicial or legal field is eligible for appointment as a Judge of the Supreme Court.

*Explanation*—For the purpose of this clause, services rendered prior to the commencement of this Constitution as a Judge of a Regional Court or Zonal Court shall be deemed as service rendered in an Appellate Court.

(4) If the office of the Chief Justice becomes vacant, or the Chief Justice is unable to carry out the duties of his office due to illness or any other reason, or he cannot be present in office due to a leave of absence or his being outside of Nepal, His Majesty may designate the seniormost Judge to act as the Acting Chief Justice

(5) The Chief Justice or any other Judge of the Supreme Court shall hold office until he attains the age of sixty five years

(6) The Chief Justice or any other Judge of the Supreme Court may, by submitting to His Majesty his resignation in writing, resign his office at any time

(7) The Chief Justice or any other Judge of the Supreme Court shall be removed from his office if, for reasons of incompetence, misbehaviour or failure to discharge the duties of his office in good faith, the House of Representatives, by a two-thirds majority of the total number of its members, passes a resolution for his removal and the resolution is approved by His Majesty

(8) The Chief Justice or any other Judge of the Supreme Court charged pursuant to clause (7) shall be given a reasonable opportunity to defend himself, and for this purpose, the House of Representatives may constitute a Committee of Inquiry consisting of its members and legal experts for the purposes of recording the statement of the Judge, collecting evidence and submitting its findings. The working procedure of the Committee shall be determined by law

(9) The Chief Justice or the Judge of the Supreme Court against whom impeachment proceedings are being initiated pursuant to clause (7) shall not perform his duties until the proceedings are final

(10) Except as otherwise provided for in this Constitution, the remuneration, allowances, leave, pension, gratuities and other conditions of service of the Chief Justice and other Judges of the Supreme Court shall be regulated by law

(11) The remuneration, privileges and other conditions of service of Chief Justice and other Judges of the Supreme Court shall not be altered to their disadvantage

(12) Any person once who has once held the office of Chief Justice or Judge of the Supreme Court shall not be eligible for appointment in any Government Service, nor shall he be entitled to practice law before any office or court

Provided that nothing in this clause shall be deemed to be a bar to his appointment to a political position, to a position concerning judiciary inquiry or to a position in which his responsibility extends to giving his advice, opinions and recommendations on the basis of study, research and investigation in the field of justice or law

(13) The Chief Justice may, on the recommendation of the Judicial Council, appoint a retired Judge of the Supreme Court or any person who is qualified to be appointed Judge of the Supreme Court pursuant to this Article,

as an ad hoc Judge for a fixed term. The ad hoc Judge thus appointed shall, in carrying out his duties in the capacity of Judge, be entitled to remuneration, allowances, leave and transportation facilities similar to that of a Judge of the Supreme Court:

Provided that the Chief Justice shall obtain prior approval from His Majesty before making an appointment under this clause

#### 88. Jurisdiction of the Supreme Court

(1) Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground, and extraordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution

(2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or to settle the dispute. For these purposes the Supreme Court may with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including habeas corpus, mandamus, certiorari, Prohibition and quo warranto.

Provided that—

(a) the Supreme Court shall not be deemed to have power under this clause to interfere with the proceedings and decisions of the Military Court except on the ground of absence of jurisdiction or on the ground that a proceeding has been initiated against, or punishment given to a non-military person for an act other than an offence relating to the Army

(b) except on the ground of absence of jurisdiction, the Supreme Court shall not interfere under this clause with the proceedings and decisions of Parliament concerning penalties imposed by virtue of its Privileges

(3) The Supreme Court shall have original and appellate jurisdiction as defined by law

(4) The Supreme Court may review its own judgment or final orders subject to the conditions and in the circumstances prescribed by law

(5) If His Majesty wishes to have an opinion of the Supreme Court on any complicated legal question of interpretation of this Constitution or of any other law, the Court shall, upon consideration on the question, report to His Majesty its opinion thereon

(6) Other powers and procedures of the Supreme Court shall be as prescribed by law

#### **89. Establishment and Management of Appellate Courts and District Courts**

The establishment, management and jurisdiction of the Appellate Courts, District Courts and other courts subordinate to the Supreme Court shall be determined by law subject to this Constitution

#### **90. Qualifications for Judges of Appellate Courts and District Courts**

(1) Any person who is a Nepali citizen shall be eligible for appointment as Chief Judge or other Judge of an Appellate Court if he, having a Bachelor's Degree in law, has worked as a District Judge or worked in any other equivalent post for a period of at least seven years, or has practised law for a least ten years as a law graduate advocate or senior advocate, or has taught law or done research thereon or has worked in any other field of law or justice for at least ten years

(2) A person who is a Nepali citizen, who has a Bachelor's Degree in law, and has worked for at least four years as a second class gazetted officer in the Judicial Service is eligible for appointment as a District Judge

Provided that nothing herein shall prevent the continuance or the reappointment of the Judges who at the commencement of this Constitution are working as Judges

(3) Unless the subject or context otherwise requires, the word "Judge" as mentioned in this Article and ensuing Articles, shall mean and include an Additional Judge

#### **91 Appointment and Conditions of Service of the Judges of Appellate Courts and District Courts**

(1) His Majesty shall, on the recommendation of the Judicial Council, appoint any Chief Judge and Judges of the Appellate Courts and any Judges of the District Courts

Provided that His Majesty may delegate His authority to the Chief Justice for the appointment of the District Judges to be made on the recommendation of the Judicial Council

(2) The Chief Justice may transfer a Judge of an Appellate or District Court from one court to another on the recommendation of the Judicial Council

(3) If the Judicial Council recommends that a Chief Judge or any other Judge of an Appellate Court or any Judge of a District Courts be removed from his office for reasons of incompetence, misbehaviour or failure to carry out the duties of his office in good faith, or if it recommends that it is necessary and expedient to initiate proceedings against such Judge in accordance with law for reasons of misbehaviour, and if such recommendation is accepted by His Majesty, such Chief Judge or Judge shall be so removed from his office or proceedings will be initiated against him in accordance with law

Provided that the Chief Judge or any other Judge who is facing such charge shall be given a reasonable opportunity to defend himself before the said recommendation is made and for this purpose, the Judicial Council shall cause an investigation to be made by a Committee of Inquiry under the Chairmanship of Judge of the Supreme Court for the purposes of recording the statement of the Judge, collecting evidence and submitting its findings

(4) A Chief Judge or a Judge of an Appellate Court, or a Judge of a District Court may, by submitting to His Majesty his resignation in writing, resign his office

(5) A Chief Judge and other Judges of an Appellate or District Court shall continue to hold office until the age of sixty-three

(6) The remuneration, allowances, leave, pension, gratuities or other privileges and other conditions of service of a Chief Judge and other Judges of an Appellate or District Court shall be as determined by law

(7) The remuneration, privileges and conditions of service of a Chief Judge and other Judges of an Appellate Court or District Court shall not be altered to their disadvantage

## 92. Judges not to be Transferred to, or Engaged in, any other Assignment

A Judge shall not be transferred to, or engaged in, or deputed to, any work except that of a Judge

Provided that His Majesty may, in consultation with the Judicial Council, depute for a specified period a Judge of the Supreme Court or a Chief Judge of any Appellate Court to work concerning judicial inquiry, to legal or judicial investigation or research, or to any other work of national concern.

With regard to other Judges of the Appellate Courts and District Courts, the Chief Justice may, in consultation with the Judicial Council, depute them to the above works, including election works

## 93. Judicial Council

(1) There shall be a Judicial Council to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of Judges, and other matters relating to judicial administration, which shall consist of the following as its Chairman and members —

- (a) the Chief Justice, *ex-officio* Chairman,
- (b) the Minister of Justice, *ex-officio* member,
- (c) the two seniormost Judges of the Supreme Court, *ex-officio* members, and
- (d) one distinguished jurist to be nominated by His Majesty

(2) Notwithstanding anything contained in clause (1) above, if it becomes necessary for the Judicial Council to consider any matter relating to a Judge who is a member of the Council or to make a recommendation to His Majesty about such Judge, the Judge next in seniority shall take part as a member

(3) The term of office and privileges of the member referred to in sub-clause (d) of clause (1) shall be as prescribed by His Majesty

(4) The powers and duties of the Judicial Council other than those referred to in clause (1) shall be as prescribed by law

(5) The Judicial Council may frame rules to regulate its business. Such rules shall become effective upon approval by His Majesty

#### 94. Judicial Service Commission

(1) In appointing, transferring or promoting Gazetted Officers of the Judicial Service or taking departmental action concerning such officer in accordance with law, His Majesty's Government shall act on the recommendation of the Judicial Service Commission

Provided that His Majesty's Government shall consult the Public Service Commission for the purpose of permanent recruitment to gazetted posts of the Judicial Service from persons who are not already in the Government Service or from persons being promoted from non-gazetted to gazetted posts within the Judicial Service

(2) The Judicial Service Commission shall consist of the following as its Chairman and members

(a) the Chief Justice, ex-officio Chairman,

(b) the Minister of Justice, ex-officio member,

(c) the Senior most Judge of the Supreme Court, ex-officio member,

(d) the Chairman of the Public Service Commission, ex-officio member, and

(e) the Attorney-General, ex-officio member.

(3) Other powers, duties and procedures of the Judicial Service Commission shall be as determined by law

#### 95 Duty to Extend Cooperation

It shall be the duty of His Majesty's Government and the offices and officials subordinate to His Majesty's Government to act in aid of the Supreme Court and other courts in carrying out the functions of dispensing justice

#### 96. Orders and Decisions of the Courts to be Binding

(1) All shall abide by the orders and decisions made in the course of hearing of a suit by courts

(2) Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing of a suit shall be binding on His Majesty's Government and all offices and courts

**PART 12****COMMISSION FOR THE INVESTIGATION OF  
ABUSE OF AUTHORITY****97. Commission for the Investigation of Abuse of Authority**

(1) There shall be a commission to be called the Commission for the Investigation of Abuse of Authority of the Kingdom of Nepal consisting of a Chief Commissioner and such other Commissioners as may be required. If apart from the Chief Commissioner other Commissioners are appointed, the Chief Commissioner shall act as Chairman of the Commission for the Investigation of Abuse of Authority.

(2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.

(3) The term of office of the Chief Commissioner and other Commissioners shall be six years from the date of appointment. They shall be eligible for reappointment. Provided that

(a) if before the expiry of his term, the Chief Commissioner or a Commissioner attains the age of sixty five, he shall retire.

(b) The Chief Commissioner or a Commissioner may be removed from his office on the same grounds and in the same manner as has been set forth for the removal of a Judge of the Supreme Court.

(4) The office of the Chief Commissioner or a Commissioner shall be deemed vacant under the following circumstances

(a) if he dies, or

(b) if his resignation submitted to His Majesty in writing is accepted by Him, or

(c) if pursuant to clause (3) his term expires or he is removed from his office.

(5) No person shall be eligible to be appointed as the Chief Commissioner or a Commissioner unless he

(a) holds a Bachelor's Degree from a university recognised by His Majesty's Government,

(b) is not a member of any political party immediately before appointment,

(c) has at least ten years experience in the field of either law, accounting, revenue, construction, development or research, and is a distinguished person and

(d) has attained the age of forty five.

(6) The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall not, so long as they hold office, be altered to their disadvantage.

(7) A person once appointed as the Chief Commissioner or Commissioner shall not be eligible for appointment in other Government Service

Provided that —

(a) nothing in this clause shall be deemed to be a bar to appointment of a Commissioner of the Commission for the Investigation of Abuse of Authority as its Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his term of office shall be computed as to include his term as Commissioner

(b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject

**98. Functions, Duties and Powers of the Commission for the Investigation of Abuse of Authority**

(1) the Commission for the Investigation of Abuse of Authority may, in accordance with law, conduct or cause to be conducted inquiries into, and investigations of, improper conduct or corruption by a person holding any public office

Provided that the Commission for the Investigation of Abuse of Authority shall not have jurisdiction over the following officials

(a) any official in relation to whom this Constitution itself separately provides for such action, and

(b) any official to be prosecuted under the Army Act

(2) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant to clause (1), that any person holding any public office has misused his authority by improper conduct, it may admonish such person, or forward a recommendation to the concerned authority in writing for taking departmental or any other necessary action

(3) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant to clause (1), that a person holding any public office has committed an act which is defined by law as corrupt, it may bring or cause to be brought an action against such person or any other person involved therein in a court with jurisdiction in accordance with law

(4) Subject to this Constitution, other functions, duties, powers and procedures of the Commission for the Investigation of Abuse of Authority shall be as determined by law

(5) The Commission for the Investigation of Abuse of Authority may delegate any of its powers, functions and duties relating to the inquiry, investigation or bringing actions, to the Chief Commissioner, a Commissioner

or any employee of His Majesty's Government to be exercised and complied with subject to the specified conditions

(6) The Commission for the Investigation of Abuse of Authority shall submit an annual report to His Majesty on the works it has performed in accordance with this Constitution. His Majesty shall cause such report to be laid before Parliament

### PART 13 AUDITOR-GENERAL

#### 99. Auditor-General

(1) There shall be an Auditor-General of the Kingdom of Nepal who shall be appointed by His Majesty on the recommendation of the Constitutional Council

(2) The term of office of the Auditor-General shall be six years from the date of appointment. He shall be eligible for reappointment

Provided that —

(a) if before the expiry of his term, the Auditor-General attains the age of sixty five, he shall retire

(b) he may be removed from his office on the same grounds and in the same manner as has been set forth for the removal of a Judge of the Supreme Court

(3) The office of the Auditor-General shall be deemed vacant in the following circumstances

(a) if he dies, or

(b) if his resignation submitted to His Majesty in writing is accepted by Him, or

(c) if pursuant to clause (2) his term expires or he is removed from his office

(4) No person shall be eligible to be appointed as the Auditor-General unless he

(a) holds a Bachelor's Degree from a university recognized by His Majesty's Government,

(b) has worked for at least five years as a special class officer of His Majesty's Government or has experience in the field of accounting of not less than fifteen years,

(c) is not a member of any political party immediately before appointment, and

(d) has attained the age of forty five

(5) The remuneration and other conditions of service of the Auditor-General shall be as determined by law. The remuneration and other conditions of service of the Auditor-General shall not, so long as he holds office, be altered to his disadvantage

(6) A person once appointed to the office of the Auditor-General shall not be eligible for appointment in other Government service

Provided that nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject

#### **100. Functions, Duties and Powers of the Auditor-General**

(1) The accounts of the Supreme Court, the Parliament, the Raj Parishad, the Commission for the Investigation of Abuse of Authority, the Office of the Auditor-General, the Public Service Commission, the Election Commission, other offices of the Constitutional Bodies, the Royal Nepal Army and the Nepal Police, and all other government offices and courts shall be audited by the Auditor-General in the manner as determined by law, with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof

(2) The Auditor-General shall be consulted in the matter of appointment of auditors for carrying out the audit of any corporate body of which His Majesty's Government owns more than fifty per cent of the shares or the assets. The Auditor-General may also issue necessary directives setting forth the principles for carrying out the audit of such corporate bodies

(3) The Auditor-General and his assistants shall, at all times, have access to documents concerning the accounts for the purpose of carrying out the functions stipulated in clause (1) above. It shall be the duty of the concerned office to provide all such documents or information which may be demanded by the Auditor-General or his assistants

(4) The accounts to be audited pursuant to clause (1) above shall, subject to the relevant law, be maintained in such form as prescribed by the Auditor-General

(5) In addition to the accounts of the offices referred to in clause (1) above, the law may also require that the accounts of any other office or institution be audited by the Auditor-General

(6) The Auditor-General shall submit an annual report to His Majesty on the works he has performed. His Majesty shall cause such report to be laid before Parliament

### **PART 14**

#### **PUBLIC SERVICE COMMISSION**

##### **101. Public Service Commission**

(1) There shall be a Public Service Commission of the Kingdom of Nepal consisting of a Chairman and such number of other members as may be required

(2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chairman and other members of the Public Service Commission

(3) At least fifty percent of the total number of the members of the Public Service Commission shall be appointed from persons who have worked for ten or more than ten years in any government office, and the rest of the members shall be appointed from persons, who have done research, investigation, teaching or any other significant work in such as like science, art, literature, law or any other sphere of national life and who hold a high reputation

(4) The term of office of the Chairman and the members of the Public Service Commission shall be six years from the date of appointment. They shall be eligible for reappointment.

Provided that

(a) if before the expiry of his term, the Chairman or a member of the Public Service Commission attains the age of sixty five, he shall retire

(b) the Chairman and the members of the Public Service Commission may be removed from their offices on the same grounds and in the same manner as has been set forth for removal of a Judge of the Supreme Court

(5) The office of the Chairman or a member of the Public Service Commission shall be deemed vacant in the following circumstances:

(a) if he dies, or

(b) if his resignation submitted to His Majesty in writing is accepted by Him, or

(c) if pursuant to clause (4) his term expires or he is removed from his office

(6) No person shall be eligible to be appointed as the Chairman or a member of the Public Service Commission unless he

(a) holds a Post Graduate Degree from a university recognised by His Majesty's Government,

(b) is not a member of any political party immediately before appointment, and

(c) has attained the age of forty five

(7) The remuneration and other conditions of service of the Chairman and the members of the Public Service Commission shall be as determined by law. The remuneration and other conditions of service of the Chairman and the members of the Public Service Commission shall not, so long as they hold office, be altered to their disadvantage

(8) Any person once appointed to the office of the Chairman or a member of the Public Service Commission shall not be eligible for appointment in other Government Service

Provided that

(a) nothing in this clause shall be a bar to appointment of a member of the Public Service Commission as Chairman thereof, and when a member is so appointed as the Chairman, his term of office shall be computed as to include his term as member; and

(b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject

#### 102. Functions, Duties and Powers of the Public Service Commission

(1) It shall be the duty of the Public Service Commission to conduct examinations for the selection of suitable candidates to be appointed to Civil Service posts

Explanation —For the purposes of this Article, all services and positions in His Majesty's Government shall be deemed included within the civil Service, except army officers and soldiers, the service and positions of police personnel, and such other services and positions as are excluded from the Civil Service or positions by any law

(2) Permanent appointment to any position in the Civil Service which carries the benefit of pension shall not be made except in consultation with the Public Service Commission

(3) The Public Service Commission shall be consulted on the following subjects

(a) matters concerning the law relating to the conditions of service of the Civil Service,

(b) the general principles to be followed in the course of appointment to, promotion to, and departmental action concerning the Civil Service or positions,

(c) matters concerning the suitability of any candidate for appointment to a Civil Service position for a period of more than six months,

(d) matters concerning the suitability of any candidate for transfer or promotion from one service to another within the Civil Service or from any other Government Service to the Civil Service,

(e) matters concerning the permanent transfer or promotion of any employee, working in any position of an organisation which is not required to consult with the Public Service Commission on matters of appointment, to any position for which consultation with the Public Service Commission is required, and

(f) matters relating to departmental actions proposed against any civil servant

(4) Notwithstanding anything contained in clause (3), matters falling within the purview of the Judicial Service Commission pursuant to Article 94 of this Constitution shall be governed by that Article

(5) The Public Service Commission may delegate any of its functions, duties and powers to any of its members, a committee of such members or any employee of His Majesty's Government, to be exercised and complied with subject to the specified conditions

(6) Subject to this Constitution, other functions, duties and working procedures of the Public Service Commission shall be as regulated by law

(7) Each year, the Public Service Commission shall submit to His Majesty an annual report on the works it has performed His Majesty shall cause such report to be laid before Parliament

## **PART 15**

### **ELECTION COMMISSION**

#### **103. Election Commission**

(1) There shall be an Election Commission of the Kingdom of Nepal consisting of a Chief Election Commissioner and such number of other Commissioners as may be required If apart from the Chief Election Commissioner other Election Commissioners are appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission

(2) His Majesty shall, on the recommendation of the Constitutional Council, appoint the Chief Election Commissioner and other Election Commissioners

(3) The term of office of the Chief Election Commissioner and other Election Commissioners shall be six years from the date of appointment They shall be eligible for reappointment

Provided that

(a) if before the expiry of his term, the Chief Election Commissioner or an Election Commissioner attains the age of sixty five, he shall retire

(b) The Chief Election Commissioner and other Election Commissioners may be removed from their offices on the same grounds and in the same manner as has been set forth for removal of a Judge of the Supreme Court

(4) The office of the Chief Election Commissioner or an Election Commissioner shall be deemed vacant in the following circumstances —

(a) if he dies, or

(b) if his resignation submitted to His Majesty in writing is accepted by Him; or

(c) if pursuant to clause (3) his term expires or he is removed from his office.

(5) No person shall be eligible to be appointed as the Chief Election Commissioner or an Election Commissioner unless he

(a) holds a Bachelor's Degree from a university recognised by His Majesty's Government,

(b) is not a member of any political party immediately before appointment, and

(c) has attained the age of forty five

(6) The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall not, so long as they hold office, be altered to their disadvantage.

(7) A person once appointed to the office of the Chief Election Commissioner or an Election Commissioner shall not be eligible for appointment in other Government Service.

Provided that

(a) nothing in this clause shall be a bar to appointment of an Election Commissioner as Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his term of office shall be computed as to include his term as Commissioner.

(b) nothing in this clause shall be a bar to appointment to any position of a political nature, or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendations after carrying out studies or research on any subject.

#### 104. Functions, Duties and Powers of the Election Commission

(1) The Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the elections to Parliament and local authorities at the village, town and district levels. For these purposes, the Election Commission shall prepare the electoral rolls of voters.

(2) If, after nominations for election to Parliament have been filed but before the election is completed, a question arises whether a candidate is disqualified or has ceased to possess the qualifications set forth in Article 47, final decision thereon shall be made by the Election Commission.

(3) The Election Commission may delegate any of its functions, duties and powers to the Chief Election Commissioner, a Commissioner or any employee of His Majesty's Government to be exercised and complied with subject to the specified conditions.

(4) Subject to this Constitution, other functions, duties and working procedures of the Election Commission shall be as regulated by law.

#### 105. Election Constituency Delimitation Commission

(1) His Majesty shall, on the recommendation of the Constitutional Council, constitute an Election Constituency Delimitation Commission. The tenure of the Commission shall be as specified by His Majesty.

(2) After determining the number of seats in the House of Representatives for each district pursuant to Article 45, The Election Constituency Delimitation Commission shall delimitate the constituencies in districts having more than one seat, and in so delimitating the constituencies, the Commission shall give due consideration to the boundaries, the geographical conditions, the density of population, the transportation facilities, and the communal homogeneity or heterogeneity of the local residents in the administrative districts

(3) No question shall be raised in any court on matters of allocation of seats to a district and the delimitation of constituencies made by the Election Constituency Delimitation Commission pursuant to clause (2)

(4) The remuneration and privileges of the Chairman and the members of the Election Constituency Delimitation Commission shall be similar to those of the Chief Election Commissioner and the Election Commissioners respectively

(5) Subject to this Constitution, other functions, duties and working procedures of the Election Constituency Delimitation Commission shall be as regulated by law

#### **106. Election Court**

Petitions concerning elections shall be entertained by a court prescribed by law

#### **107. Restriction on Court Interference in Matters Relating to Elections**

Notwithstanding anything contained in other Articles of this Constitution, unless a petition is filed in the manner prescribed by law in the court prescribed under Article 106, no question shall be raised in any court regarding any election to the membership of Parliament

#### **108. His Majesty's Government to Provide Necessary Employees to the Election Commission**

His Majesty's Government shall provide such necessary employees and other things as may be required to carry out the functions of the Election Commission in accordance with this Constitution

### **PART 16**

#### **ATTORNEY-GENERAL**

#### **109. Appointment of Attorney-General**

(1) There shall be an Attorney-General of the Kingdom of Nepal to be appointed by His Majesty on the recommendation of the Prime Minister. The Attorney-General shall hold office during the pleasure of His Majesty

(2) No person shall be eligible to being appointed as Attorney-General unless he is qualified to be appointed as a Judge of the Supreme Court

(3) The office of the Attorney-General shall be deemed vacant under the following circumstances

- (a) if he dies, or
- (b) if his resignation submitted to His Majesty in writing is accepted by Him, or
- (c) if he is relieved of his office by His Majesty on the recommendation of the Prime Minister
- (4) The remuneration and other conditions of service of the Attorney-General shall be as determined by law

#### **110. Functions, Duties and Powers of the Attorney-General**

(1) The Attorney-General shall be the Chief Legal Advisor to His Majesty's Government. It shall be the duty of the Attorney-General to give opinions and advice on constitutional and legal matters to His Majesty's Government and such other authorities as His Majesty's Government may specify.

(2) The Attorney-General or officers subordinate to him shall represent His Majesty's Government in suits wherein the rights, interests or concerns of His Majesty's Government are involved. The Attorney-General shall have the right to make the final decision as to whether or not to initiate proceedings in any case on behalf of His Majesty's Government in any court or judicial authority.

(3) In addition to the functions, duties and powers referred to in clauses (1) and (2), other functions, duties and powers of the Attorney-General shall be as specified in this Constitution or other laws.

(4) In the course of discharging his official duties, the Attorney-General shall have the right to appear in any court, office or authority of the Kingdom of Nepal.

(5) The Attorney-General may delegate his functions, duties and powers under this Article to his subordinates, to be exercised and complied with subject to the specified conditions.

(6) Each year, the Attorney-General shall submit an annual report to His Majesty's Government on the works performed by him in accordance with this Constitution and other laws, including a statement about crimes committed in the Kingdom of Nepal and His Majesty's Government shall cause the report to be laid before Parliament.

#### **111. Right to Appear in Parliament**

The Attorney-General shall have the right to appear and express his opinion on any legal question in either House, any of their committees or the Joint Session of Parliament.

Provided that he shall not have the right to vote.

## PART 17

## POLITICAL ORGANISATIONS

**112. Prohibition on the Imposition of Restrictions on Political Organisations or Parties**

(1) Persons who are committed to common political objectives and programmes shall, subject to laws made under proviso (3) of clause (2) of Article 12 of this Constitution, be entitled to form and operate political organisations or parties of their choice and to generate or cause to be generated publicity in order to secure support and cooperation from the general public for their objectives and programmes, and to carry out any other activity for this purpose. Any law, arrangement or decision which restricts any of such activities shall be inconsistent with this Constitution and shall be void.

(2) Any law, arrangement or decision which allows for participation or involvement of only a single political organisation or party or persons having a single political ideology in the elections or in the political system of the country shall be inconsistent with this Constitution and shall be void.

(3) The Election Commission shall withhold recognition from any political organisation or any party formed either with the objectives mentioned in clause (2) above or on the basis of religion, community, caste, tribe or region.

**113. Registration Required for Securing Recognition for the purpose of Contesting Elections as a Political Organisation or Party**

(1) Any political organisation or party wishing to secure recognition from the Election Commission for the purposes of elections, shall be required to register its name with the office of the Election Commission in accordance with the procedure as determined by the Commission. A petition so submitted for registration shall contain clear information about the name of the concerned political organisation or party, the names and addresses of the members of its executive committee or any such other committee and such petition shall be accompanied by the rules and manifesto of the organisation or the party.

(2) Political organisations and parties shall be required to fulfill, in addition to the matters contained in this Part, the following conditions in order to qualify for registration pursuant to clause (1) above:

(a) the constitution and rules of the political organisation or party must be democratic,

(b) the constitution or the rules of the organisation or party must provide for election of office bearers of the organisation or party at least once every five years,

(c) must have complied with the provisions of Article 114, and

(d) must have secured a minimum of three percent of the total votes cast in the election to the House of Representatives.

Provided that the terms and conditions mentioned in this sub-clause shall not apply to the contesting of the first election to the House of Representatives held pursuant to this Constitution

*Explanation*—If any candidate belonging to a party which has secured less than three percent of the total votes cast is elected to the House of Representatives, such person shall be deemed to be an independent not belonging to an organisation or party

(3) The Election Commission shall not register any political organisation or party if any Nepali citizen of is discriminated against in becoming a member on the basis of religion, caste, tribe, language or sex or if the name, objectives, insignia or flag is of such a nature that it is religious or communal or tends to fragment the country

#### 114 Woman Candidates

For the purposes of elections to the House of Representatives, at least five per cent of the total number of candidates contesting an election from any organization or party must be women candidates

### PART 18

#### EMERGENCY POWER

##### 115. Emergency Power

(1) If a grave crisis arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, His Majesty may, by Proclamation, declare or order a state of Emergency in respect of the whole of the Kingdom of Nepal or of any specified part thereof

(2) Every Proclamation or order issued under clause (1) above shall be laid before a meeting of the House of Representatives for approval within three months from the date of issuance

(3) If a Proclamation or order laid for approval pursuant to clause (2) is approved by a two-thirds majority of the House of Representatives present at that meeting, such Proclamation or order shall continue in force for a period of six months from the date of issuance

(4) If a Proclamation or order laid for approval pursuant to clause (2) is not approved pursuant to clause (3), such Proclamation or order shall be deemed ipso facto to cease to operate

(5) Before the expiration of the period referred to in clause (3), if a meeting of the House of Representatives, by a majority of two-thirds of the members present, passes a resolution to the effect that circumstances referred to in clause (1) above continue to exist, it may extend the period of the Proclamation or order of the state of Emergency for one other period, not exceeding six months as specified in such resolution, and the Speaker shall inform His Majesty of such extension

(6) During a dissolution of the House of Representatives, the National Assembly shall exercise the powers of the House of Representatives for the purposes of clauses (2), (3), (4) and (5) above

(7) After the State of Emergency has been declared pursuant to clause (1), His Majesty may issue such Orders as are necessary to meet the exigencies. Orders so issued shall be operative with the same force and effect as law so long as the state of Emergency is in operation

(8) His Majesty may, at the time of making a Proclamation or order of a state of Emergency pursuant to clause (1), suspend sub-clauses (a), (b), (d) and (e) of clause (2) of Article 12, clause (1) of Article 13 and Articles 15, 16, 17, 22 and 23 of this Constitution for as long as the Proclamation is in operation

Provided that the right to the remedy of habeas corpus under Article 23 shall not be suspended

(9) In circumstances where His Majesty has suspended any Article of this Constitution pursuant to clause (8), no petition may lie, nor question be raised in any court for the enforcement of the fundamental right conferred by such Article

(10) If, during the continuance of a Proclamation or order under clause (1), any damage is inflicted upon any person by an act of any official which was done in contravention of law or in bad faith, the affected person may, within three months from the date of termination of the Proclamation or order, file a petition for compensation for the said damage and if the court finds the claim valid, it shall cause compensation to be delivered

(11) A Proclamation or order of a state of Emergency issued pursuant to clause (1) may be revoked by His Majesty at any time during its continuance

## PART 19

### AMENDMENT OF THE CONSTITUTION

#### 116. Amendment of the Constitution

(1) A Bill to amend or repeal any Article of this Constitution, without prejudicing the spirit of the Preamble of this Constitution, may be introduced in either House of Parliament

Provided that this shall not be subject to amendment

(2) If each House, with a two-thirds majority of its total membership attending, passes a Bill introduced pursuant to clause (1) by a majority of at least two-thirds of the members present, the Bill shall be submitted to His Majesty for assent, and His Majesty may, within thirty days from the date of submission, either grant assent to such Bill or send the Bill back for reconsideration with His message to the House where the Bill originated

(3) A Bill sent back by His Majesty pursuant to clause (2) above shall be reconsidered by both Houses of Parliament, and if both the Houses, upon following the procedures referred to in clause (2), resubmit the Bill in its

original an amended form to His Majesty for assent, His Majesty shall grant assent to such Bill within thirty days of such submission

## PART 20

### MISCELLANEOUS

#### 117. Constitutional Council

(1) There shall be a Constitutional Council, for making recommendations in accordance with this Constitution for appointment of officials to Constitutional Bodies, which shall consist of the following as Chairman and members

- (a) the Prime Minister, Chairman,
- (b) the Chief Justice, Member,
- (c) the Speaker of the House of Representatives, Member,
- (d) the Chairman of the National Assembly, Member, and
- (e) the Leader of the Opposition in the House of Representatives, Member

(2) For the purpose of recommendation of an appointment of the Chief Justice, the Constitutional Council shall include among its members the Minister of Justice and a Judge of the Supreme Court

(3) The functions, duties and powers of the Constitutional Council shall be as determined by this Constitution and other laws

(4) The Constitutional Council constituted pursuant to clause (1) shall have the power to regulate its working procedures on its own

#### 118. Provisions Regarding the Royal Nepal Army

(1) There shall be a National Defence Council of Nepal consisting of the following as Chairman and members —

- (a) the Prime Minister, Chairman,
- (b) the Defence Minister, Member, and
- (c) the Commander-in-Chief, Member

(2) His Majesty shall operate and use the Royal Nepal Army on the recommendation of the National Defence Council

(3) The establishment and management of the Royal Nepal Army, and other matters relating thereto, shall be as determined by law

(4) The National Defence Council shall have the power to regulate its working procedures on its own

#### 119. Supreme Command of the Royal Nepal Army and Appointment of the Commander-in-Chief

- (1) His Majesty is the Supreme Commander of the Royal Nepal Army
- (2) His Majesty shall appoint the Commander-in-Chief of the Royal Nepal Army on the recommendation of the Prime Minister.

**120. Royal Nepalese Ambassadors and Emissaries**

(1) His Majesty shall appoint the Royal Nepalese Ambassadors.

(2) His Majesty may designate a Royal Representative for representing Him on special occasion, and may appoint a Special Emissary for a specified purpose.

**121. Provisions Regarding Employees of the Royal Palace**

Matters relating to the conditions of service of the employees of the Royal Palace including those of appointment, dismissal, salary, allowances, leave and pension shall be as determined by rules made by His Majesty at his discretion.

**122. Pardons**

His Majesty shall have the power to grant pardons and to suspend, commute or remit any sentence passed by any court, special court, military court or by any other judicial, quasi-judicial or administrative authority or institution.

**123. Titles, Honours and Decorations**

(1) The titles, honours or decorations to be conferred on behalf of the State shall be conferred by His Majesty.

(2) No citizen of Nepal shall, without the approval of His Majesty, accept any title, honour or decoration from the Government of any country.

**124. Constitution of the Civil Service**

His Majesty's Government may, in order to run the administration of the country, constitute services as may be required. The constitution, operation and conditions of service thereof shall be as determined by an Act.

**125. Provisions Regarding Citizenship of Officials of the Constitutional Bodies**

In order to be eligible for appointment to constitutional positions under this Constitution, a person must either be a citizen of Nepal by birth or descent, or be a person who, as a naturalised citizen, has resided in Nepal for at least ten years.

**126. Ratification of, Accession to, Acceptance of or Approval of Treaty or Agreements**

(1) The ratification of, accession to, acceptance of or approval of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is to become a party shall be as determined by law.

(2) The laws to be made pursuant to clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of or approval of treaties or agreements on the following subjects be done by a majority of two-thirds of the members present at a joint sitting of both Houses of Parliament—

(a) peace and friendship;

(b) defence and strategic alliance;

- (c) boundaries of the Kingdom of Nepal, and
- (d) natural resources, and the distribution of their uses.

Provided that out of the treaties and agreements referred to in sub-clauses (a) and (d), if any treaty or agreement is of an ordinary nature, which does not affect the nation extensively, seriously, or in the long term, the ratification of, accession to, acceptance of or approval of such treaty or agreement may be done at a meeting of the House of Representatives by a simple majority of the members present.

(3) After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with this Article, it shall not be binding on His Majesty's Government or the Kingdom of Nepal

(4) Notwithstanding anything contained in clauses (1) and (2), no treaty or agreement shall be concluded that is detrimental to the territorial integrity of the Kingdom of Nepal

#### 127. Power to Remove Difficulties

If any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary Orders to remove such difficulty and such Orders shall be laid before Parliament

### PART 21

## TRANSITIONAL PROVISIONS

#### 128. Provisions Regarding the Council of Ministers

(1) The Council of Ministers existing at the commencement of this Constitution shall be deemed to have been constituted under this Constitution

(2) If, for any reason the Council of Ministers referred to in clause (1) is dissolved, His Majesty shall constitute a new Council of Ministers consisting of representatives from the main political parties

(3) A Council of Ministers constituted under clause (2) above shall consist of a Prime Minister and, on his recommendation, other Ministers, State Ministers and Assistant Ministers as may be required

#### 129. Making of Laws until the First Session of Parliament

After the commencement of this Constitution, His Majesty shall have the power to enact laws as required on the recommendation and advice, and with the consent of the Council of Ministers until the commencement of the first session of Parliament

#### 130. Provisions Regarding Constitutional Bodies and Officials thereof Appointed Pursuant to the Constitution of Nepal (1962)

(1) The Constitutional Bodies and officials thereof subsisting at the commencement of this Constitution, but which are not re-established under this Constitution shall cease to subsist after the commencement of this

Constitution, and the officials working in the Constitutional Bodies which continue to subsist in accordance with this Constitution shall stand relieved of their offices if not reappointed within nine months of the commencement of this Constitution

Provided that His Majesty may, if necessary, relieve any constitutional official before the expiry of the said period

(2) The Council of Ministers shall exercise the functions, duties and powers of the Constitutional Council until the commencement of the first session of Parliament after the elections held in accordance with this Constitution

(3) Pending the making of arrangements as to the Appellate Courts pursuant to Article 89, the Zonal Courts and Regional Courts constituted under the Judicial Administration Reforms Act, 1975 shall remain in operation as they were, and the Judges working in those courts shall continue to hold their positions

(4) The District Courts existing at the commencement of this Constitution shall, until otherwise provided by law, continue to subsist, and the Judges working in those Courts shall continue to hold their positions until a different arrangement is made

(5) Petitions and complaints pending in the Prevention of Abuse of Authority Commission shall be transferred to the Commission for the Investigation of Abuse of Authority

(6) Cases which are pending in the Prevention of Abuse of Authority Commission shall be transferred to the Central Regional Court existing under clause (3), and the Regional Court shall decide those cases in accordance with the existing law

(7) Appeals, and petitions relating thereto pending in the Prevention of Abuse of Authority Appellate Court shall be transferred to the Supreme Court and the Supreme Court shall decide those appeals and petitions in accordance with the existing law

(8) Petitions registered with the Judicial Committee in accordance with law and pending therein shall be transferred to the Supreme Court after the commencement of the Constitution, and if the Supreme Court deem appropriate, it shall, in exercising its power of review, decide those petitions

### 131. Existing Laws to Remain in Operation

All laws in force at the commencement of this Constitution shall remain in operation until repealed or amended

Provided that laws inconsistent with this Constitution shall, to the extent of inconsistency, ipso-facto cease to operate one year after the commencement of this Constitution

**PART 22****DEFINITIONS AND INTERPRETATION****132. Definitions and Interpretation**

- (1) Unless the subject or context otherwise requires, in this Constitution
- (a) "Article" means an Article of this Constitution,
  - (b) "Nepal" means the Kingdom of Nepal,
  - (c) "Citizen" means a citizen of Nepal,
  - (d) "Bill" means a draft of an Act which has been introduced in Parliament,
  - (e) "Petition" means a document bearing the signature of the petitioner,
  - (f) "Remuneration" means and includes salary, allowances, pension and any other forms of emoluments
- (2) Unless the subject or context otherwise requires, the Nepal Law Interpretation Act, 1953 shall, subject to the provisions of this Constitution, apply to the interpretation of this Constitution in the same manner as that law applies to the interpretation of the laws of Nepal

**PART 23****SHORT TITLE AND COMMENCEMENT****133. Short Title and Commencement**

- (1) This Constitution may be called "The Constitution of The Kingdom of Nepal, 2047 (1990) "
- (2) This Constitution shall come into force on Friday the twenty-third day of the month of Kartik of the year 2047 Bikram Sambat (November 9, 1990)
- (Schedules not reproduced)*
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# 25

## CONSTITUTION OF NETHERLANDS

{Adopted on 17 Feb 1983}

### CHAPTER 1 FUNDAMENTAL RIGHTS

#### 1. Equality

All persons in the Netherlands shall be treated *equally in equal circumstances*. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted

#### 2. Citizenship

(1) Dutch nationality shall be regulated by Act of Parliament

(2) The admission and expulsion of aliens shall be regulated by Act of Parliament

(3) Extradition may take place only pursuant to a treaty. Further regulations concerning extradition shall be laid down by Act of Parliament

(4) Everyone shall have the right to leave the country, except in the cases laid down by Act of Parliament

#### 3. Eligibility Right

All Dutch nationals shall be equally eligible for appointment to public service

#### 4. Right to Vote

Every Dutch national shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of

those bodies, subject to the limitations and exceptions prescribed by Act of Parliament

#### 5. Petitions

Everyone shall have the right to submit petitions in writing to the competent authorities

#### 6. Religion, Belief

(1) Everyone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law

(2) Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders

#### 7. Expression

(1) No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law

(2) Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast

(3) No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals

(4) The preceding paragraphs do not apply to commercial advertising

#### 8. Association

The right of association shall be recognized. This right may be restricted by Act of Parliament in the interest of public order

#### 9. Assembly

(1) The right of assembly and demonstration shall be recognized, without prejudice to the responsibility of everyone under the law

(2) Rules to protect health, in the interest of traffic and to combat or prevent disorders may be laid down by Act of Parliament

#### 10. Privacy

(1) Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament

(2) Rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and dissemination of personal data

(3) Rules concerning the rights of persons to be informed of data recorded concerning them and of the use that is made thereof, and to have such data corrected shall be laid down by Act of Parliament.

**11. Personal Integrity**

Everyone shall have the right to inviolability of his person, without prejudice to restrictions laid down by or pursuant to Act of Parliament

**12. Home**

(1) Entry into a home against the will of the occupant shall be permitted only in the cases laid down by or pursuant to Act of Parliament, by those designated for the purpose by or pursuant to Act of Parliament

(2) Prior identification and notice of purpose shall be required in order to enter a home under the preceding paragraph, subject to the exceptions prescribed by Act of Parliament. A written report of the entry shall be issued to the occupant

**13. Secrecy of Communication**

(1) The privacy of correspondence shall not be violated except, in the cases laid down by Act of Parliament, by order of the courts

(2) The privacy of the telephone and telegraph shall not be violated except, in the cases laid down by Act of Parliament, by or with the authorization of those designated for the purpose by Act of Parliament

**14. Property**

(1) Expropriation may take place only in the public interest and on prior assurance of full compensation, in accordance with regulations laid down by or pursuant to Act of Parliament

(2) Prior assurance of full compensation shall not be required if in an emergency immediate expropriation is called for

(3) In the cases laid down by or pursuant to Act of Parliament there shall be a right to full or partial compensation if in the public interest the competent authority destroys property or renders it unusable or restricts the exercise of the owner's rights to it

**15. Personal Liberty, Arrest**

(1) Other than in the cases laid down by or pursuant to Act of Parliament, no one may be deprived of his liberty.

(2) Anyone who has been deprived of his liberty other than by order of a court may request a court to order his release. In such a case he shall be heard by the court within a period to be laid down by Act of Parliament. The court shall order his immediate release if it considers the deprivation of liberty to be unlawful

(3) The trial of a person who has been deprived of his liberty pending trial shall take place within a reasonable period

(4) A person who has been lawfully deprived of his liberty may be restricted in the exercise of fundamental rights in so far as the exercise of such rights is not compatible with the deprivation of liberty

**16. Nulla Poena Sine Lege**

No offence shall be punishable unless it was an offence under the law at the time it was committed

Articles 17-23]

17. Right to be Heard

No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law

18. Right to Counsel

(1) Everyone may be legally represented in legal and administrative proceedings

(2) Rules concerning the granting of legal aid to persons of limited means shall be laid down by Act of Parliament

19. Work

(1) It shall be the concern of the authorities to promote the provision of sufficient employment

(2) Rules concerning the legal status and protection of working persons and concerning co-determination shall be laid down by Act of Parliament

(3) The right of every Dutch national to a free choice of work shall be recognized, without prejudice to the restrictions laid down by or pursuant to Act of Parliament

20. Welfare

(1) It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth

(2) Rules concerning entitlement to social security shall be laid down by Act of Parliament

(3) Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from the authorities

21. Environment

It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment

22. Health

(1) The authorities shall take steps to promote the health of the population

(2) It shall be the concern of the authorities to provide sufficient living accommodation

(3) The authorities shall promote social and cultural development and leisure activities

23. Education

(1) Education shall be the constant concern of the Government

(2) All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, its right to examine the competence and moral integrity of teachers to be regulated by Act of Parliament

(3) Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief.

(4) The authorities shall ensure that primary education is provided in a sufficient number of public-authority schools in every municipality. Deviations from this provision may be permitted under rules to be established by Act of Parliament on condition that there is opportunity to receive the said form of education.

(5) The standards required of schools financed either in part or in full from public funds shall be regulated by Act of Parliament, with due regard, in the case of private schools, to the freedom to provide education according to religious or other belief.

(6) The requirements for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit.

(7) Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools. The conditions under which private secondary education and pre-university education shall receive contributions from public funds shall be laid down by Act of Parliament.

(8) The Government shall submit annual reports on the state of education to the Parliament.

## CHAPTER 2 GOVERNMENT

### Section 1—The King

24. The title to the Throne shall be hereditary and shall vest in the legitimate descendants of King William I, Prince of Orange-Nassau.

25. On the death of the King, the title to the Throne shall pass by hereditary succession to the King's legitimate descendants in order of seniority, the same rule governing succession by the issue of descendants who predecease the King. If the King has no descendants, the title to the Throne shall pass in the same way to the legitimate descendants of the King's parent and then of his grandparent who are in the line of succession but are not further removed from the deceased King than the third degree of consanguinity.

26. For the purposes of hereditary succession, the child of a woman pregnant at the moment of the death of the King shall be deemed already born. If it is stillborn it shall be deemed to have never existed.

27. Hereditary succession to the Throne in the event of abdication shall take place according to the rules set out in the above. Children born after an abdication and their descendants shall be excluded from the hereditary succession.

28. (1) The King shall be deemed to have abdicated if he contracts a marriage without having obtained approval by Act of Parliament

(2) Anyone in line of succession to the Throne who contracts such a marriage shall be excluded from the hereditary succession, together with any children born of the marriage and their issue

(3) The two Chambers of the Parliament shall meet to consider and decide upon a Bill for granting such approval in joint session

29 (1) One or more persons may be excluded from the hereditary succession by Act of Parliament if exceptional circumstances necessitate

(2) The Bill for this purpose shall be presented by or on behalf of the King The two Chambers of the Parliament shall consider and decide upon the matter in joint session Such a Bill shall be passed only if at least two-thirds of the votes cast are in favour

30. (1) A successor to the Throne may be appointed by Act of Parliament if it appears that there will otherwise be no successor The Bill shall be presented by or on behalf of the King, upon which the Chambers shall be dissolved The newly convened Chambers shall discuss and decide upon the matter in joint session Such a Bill shall be passed only if at least two-thirds of the votes cast are in favour

(2) The Chambers shall be dissolved if there is no successor on the death or abdication of the King The newly convened Chambers shall meet in joint session within four months of the decease or abdication in order to decide on the appointment of a King They may appoint a successor only if at least two-thirds of the votes cast are in favour

31. (1) An appointed King may be succeeded only by his legitimate descendants by virtue of hereditary succession

(2) The provisions on hereditary succession and the first paragraph of this shall apply by analogy to an appointed successor who has not yet become King

32 Upon assuming the royal prerogative the King shall be sworn in and inaugurated as soon as possible in the capital city, Amsterdam, at a public and joint session of the two Chambers of the Parliament The King shall swear or promise allegiance to the Constitution and that he will faithfully discharge his duties Specific rules shall be laid down by Act of Parliament

33. The King shall not exercise the royal prerogative before attaining the age of eighteen

34 The guardianship of a King who is a minor shall be regulated by Act of Parliament The two Chambers of the Parliament shall meet in joint session to consider and decide upon the matter

35. (1) If the Council of Ministers is of the opinion that the King is unable to exercise the royal prerogative it shall inform the two Chambers of the Parliament accordingly and shall also present to them the recommendation it has received from the Council of State The two Chambers of the Parliament shall then meet in joint session

(2) If the two Chambers of the Parliament share this opinion, they shall then resolve that the King is unable to exercise the royal prerogative. This resolution shall be made public on the instructions of the President of the joint session and shall enter into force immediately.

(3) As soon as the King regains the ability to exercise the royal prerogative, notice of the fact shall be given in an Act of Parliament. The two Chambers of the Parliament shall consider and decide upon the matter in joint session. The King shall resume the exercise of the royal prerogative as soon as the Act has been made public.

(4) If it has been resolved that the King is unable to exercise the royal prerogative, guardianship over his person shall, if necessary, be regulated by Act of Parliament. The two Chambers of the Parliament shall consider and decide upon the matter in joint session.

36. The King may temporarily relinquish the exercise of the royal prerogative and resume the exercise thereof pursuant to Act of Parliament. The relevant Bill shall be presented by or on behalf of the King. The two Chambers of the Parliament shall consider and decide upon the matter in joint session.

37. (1) The royal prerogative shall be exercised by a Regent

(a) until the King has attained the age of eighteen,

(b) if the title to the Throne may vest in an unborn child,

(c) if it has been resolved that the King is unable to exercise the royal prerogative,

(d) if the King has temporarily relinquished the exercise of the royal prerogative,

(e) in the absence of a successor following the death or abdication of the King.

(2) The Regent shall be appointed by Act of Parliament. The two Chambers of the Parliament shall consider and decide upon the matter in joint session.

(3) In the cases specified in paragraph (1) (c) and (d) above, the descendant of the King who is the heir presumptive shall become Regent by right if he has attained the age of eighteen.

(4) The Regent shall swear or promise allegiance to the Constitution and that he will faithfully discharge his duties before the two Chambers of Parliament meeting in joint session. Rules regarding the office of Regent shall be made by Act of Parliament, which may contain provisions for succession and replacement. The two Chambers of the Parliament shall consider and decide upon the matter in joint session.

(5) s 35 and 36 shall apply by analogy to the Regent.

38. The royal prerogative shall be exercised by the Council of State until such time as alternative provision is made for the exercise of such power.

39. Membership of the Royal House shall be regulated by Act of Parliament.

40. (1) The King shall receive annual payments from the State according to rules to be laid down by Act of Parliament. The Act shall also specify which other members of the Royal House shall receive payments from the State and shall regulate the payments themselves.

(2) The payments received by them from the State, together with such assets as are of assistance to them in the exercise of their duties, shall be exempt from personal taxation. In addition, anything received by the King or his heir presumptive from a member of the Royal House by inheritance or as a gift shall be exempt from inheritance tax, transfer tax, or gifts tax. Additional exemption from taxation may be granted by Act of Parliament.

(3) Bills containing legislation as referred to in the previous paragraphs may be passed by the Parliament only if at least two-thirds of the votes cast are in favour.

41. The King shall organize his Household, taking due account of the public interest.

#### Section 2—The King and the Ministers

42. (1) The Government shall comprise the King and the Ministers.

(2) The Ministers, and not the King, shall be responsible for acts of Government.

43. The Prime Minister and the other Ministers shall be appointed and dismissed by Royal Decree.

44. (1) Ministries shall be established by Royal Decree. They shall be headed by a Minister.

(2) Non-departmental Ministers may also be appointed.

45. (1) The Ministers shall together constitute the Council of Ministers.

(2) The Prime Minister shall be the Chairman of the Council of Ministers.

(3) The Council of Ministers shall consider and decide upon overall Government policy and shall promote the coherence thereof.

46. (1) State Secretaries may be appointed and dismissed by Royal Decree.

(2) A State Secretary shall act with ministerial authority in place of the Minister in cases in which the Minister considers it necessary; the State Secretary shall observe the Minister's instructions in such cases. Responsibility shall rest with the State Secretary without prejudice to the responsibility of the Minister.

47. All Acts of Parliament and Royal Decrees shall be signed by the King and by one or more Ministers or State Secretaries.

48. The Royal Decree appointing the Prime Minister shall be countersigned by the latter. Royal Decrees appointing or dismissing Ministers and State Secretaries shall be countersigned by the Prime Minister.

49. Upon accepting office Ministers and State Secretaries shall swear an oath or make an affirmation and promise in the presence of the King, in the

manner prescribed by Act of Parliament, that they have not done anything which may legally debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties

### CHAPTER 3 PARLIAMENT

#### Section 1—Organization and Composition

50. The Parliament shall represent the entire people of the Netherlands

51. (1) The Parliament shall consist of a Second Chamber and a First Chamber.

(2) The Second Chamber shall consist of one hundred and fifty members

(3) The First Chamber shall consist of seventy-five members

(4) The two Chambers shall be deemed a single entity when they meet in joint session

52. (1) The duration of both Chambers shall be four years

(2) The duration of the First Chamber shall be amended accordingly if the duration of the Provincial Councils is altered by Act of Parliament to a term other than four years

53. (1) The members of both Chambers shall be elected by proportional representation within the limits to be laid down by Act of Parliament

(2) Elections shall be by secret ballot

54. (1) The members of the Second Chamber shall be elected directly by the Dutch nationals who have attained the age of eighteen, with the exception of any Dutch nationals who may be excluded by Act of Parliament by virtue of the fact that they are not resident in the Netherlands

(2) The following persons shall not be entitled to vote

(a) anyone who has committed an offence designated by Act of Parliament and has been sentenced as a result by irrevocable judgement of a court of law to a custodial sentence of not less than one year and simultaneously disqualified from voting,

(b) anyone who has been deemed legally incompetent by irrevocable judgement of a court because of mental disorder

55. The members of the First Chamber shall be chosen by the members of the provincial councils. The election shall take place not more than three months after the election of the members of the Provincial Councils except in the event of the dissolution of the Chamber

56. To be eligible for membership of the Parliament, a person must be a Dutch national, must have attained the age of eighteen years and must not have been disqualified from voting

57. (1) No one may be a member of both Chambers

(2) A member of the Parliament may not be a Minister, State Secretary, member of the Council of State, member of the General Chamber of Audit, member of the Supreme Court, or Procurator General or Advocate General at the Supreme Court.

(3) Notwithstanding the above, a Minister or State Secretary who has offered to tender his resignation may combine the said office with membership of the Parliament until such time as a decision is taken on such resignation

(4) Other public functions which may not be held simultaneously by a person who is a member of the Parliament or of one of the Chambers may be designated by Act of Parliament

58. Each Chamber shall examine the credentials of its newly appointed members and shall decide with due reference to rules to be established by Act of Parliament any disputes arising in connection with the credentials or the election

59. All other matters pertaining to the right to vote and to elections shall be regulated by Act of Parliament

60. Upon accepting office, members of the Chambers shall swear an oath or make an affirmation and promise before the Chamber in the manner prescribed by Act of Parliament that they have not done anything which may legally debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties

61. (1) Each Chamber shall appoint a President from among its members

(2) Each Chamber shall appoint a Clerk who, like the other officials of the two Chambers, may not be a member of the Parliament

62. The President of the First Chamber shall preside when the two Chambers meet in joint session

63. Financial remuneration for members and former members of the Parliament and their dependents shall be regulated by Act of Parliament. The Chambers may pass a Bill on the matter only if at least two-thirds of the votes cast are in favor

64. (1) Each of the Chambers may be dissolved by Royal Decree

(2) A decree for dissolution shall also require new elections to be held for the Chamber which has been dissolved and the newly elected Chamber to meet within three months

(3) The dissolution shall take effect on the day on which the newly elected Chamber meets

(1) The duration of a Second Chamber that meets following a dissolution shall be determined by Act of Parliament. The term may not exceed five years. The duration of a First Chamber that meets following a dissolution shall end at the time at which the duration of the dissolved Chamber would have ended

**Section 2—Procedure**

65. A statement of the policy to be pursued by the Government shall be given by or on behalf of the King before a joint session of the two Chambers of the Parliament that shall be held every year on the third Tuesday in September or on such earlier date as may be prescribed by Act of Parliament

66. (1) The sittings of the Parliament shall be held in public

(2) The sittings shall be held in camera if one tenth of the members present so require or if the President considers it necessary

(3) The Chamber, or the two Chambers meeting in joint session, shall then decide whether the deliberations are to continue and the decisions to be taken in camera

67. (1) The two Chambers may deliberate or take decisions, either separately or in joint session, only if more than half of the members are present

(2) Decisions shall be taken by majority

(3) The members shall not be bound by a mandate or instructions when casting their votes

(4) Voting on items of business not relating to individuals shall be oral and by roll call if requested by one member

68. Ministers and State Secretaries shall provide orally or in writing the Chambers either separately or in joint session, with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State

69. (1) Ministers and State Secretaries shall have the right to attend sittings of the Parliament and may take part in the deliberations

(2) They may be invited to be present at sittings of the Chambers of the Parliament meeting either separately or in joint session

(3) They may be assisted at the sittings by persons nominated by them

70. The two Chambers shall jointly and separately have the right of inquiry to be regulated by Act of Parliament

71. Members of the Parliament, Ministers, State Secretaries, and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the Parliament or of its committees or for anything they submit to them in writing

72. Each Chamber of the Parliament and the two Chambers in joint session shall draw up rules of procedure

**CHAPTER 4****COUNCIL OF STATE, CHAMBER OF AUDIT,  
ADVISORY BODIES**

73. (1) The Council of State or a section of the Council shall be consulted on Bills and draft general administrative orders as well as proposals

for the approval of treaties by the Parliament. Such consultation may be dispensed with in cases to be laid down by Act of Parliament.

(2) The Council or a section of the Council shall be responsible for investigating administrative disputes where the decision has to be given by Royal Decree, and for advising on the ruling to be given in the said dispute.

(3) The Council or a section of the Council may be required by Act of Parliament to give decisions in administrative disputes.

74. (1) The King shall be President of the Council of State. The heir presumptive shall be legally entitled to have a seat on the Council on attaining the age of eighteen. Other members of the Royal House may be granted a seat on the Council by or in accordance with an Act of Parliament.

(2) The members of the Council shall be appointed for life by Royal Decree.

(3) They shall cease to be members of the Council on resignation or on attaining an age to be determined by Act of Parliament.

(4) They may be suspended or dismissed from membership by the Council in instances specified by Act of Parliament.

(5) Their legal status shall in other respects be regulated by Act of Parliament.

75. (1) The organization, composition and powers of the Council of State shall be regulated by Act of Parliament.

(2) Additional duties may be assigned to the Council or a section of the Council by Act of Parliament.

76. The General Chamber of Audit shall be responsible for examining the State's revenues and expenditures.

77. (1) The members of the General Chamber of Audit shall be appointed for life by Royal Decree from a list of three persons per vacancy drawn up by the Second Chamber of the Parliament.

(2) They shall cease to be members on resignation or on attaining an age to be determined by Act of Parliament.

(3) They may be suspended or dismissed from membership by the Supreme Court in cases to be laid down by Act of Parliament.

(4) Their legal status shall in other respects be regulated by Act of Parliament.

78. (1) The organization, composition and powers of the General Chamber of Audit shall be regulated by Act of Parliament.

(2) Additional duties may be assigned to the General Chamber of Audit by Act of Parliament.

79. (1) Permanent bodies to advise on matters relating to legislation and administration of the State shall be established by or pursuant to Act of Parliament.

(2) The organization, composition and powers of such bodies shall be regulated by Act of Parliament.

(3) Duties in addition to advisory ones may be assigned to such bodies by or pursuant to Act of Parliament

80. (1) The recommendations made by the bodies referred to in the present Chapter shall be made public according to rules to be laid down by Act of Parliament

(2) Other than in cases to be laid down by Act of Parliament, recommendations made in respect of Bills presented by or on behalf of the King shall be submitted to the Parliament.

## CHAPTER 5

### LEGISLATION AND ADMINISTRATION

#### Section 1—Acts of Parliament and other regulations

81. Acts of Parliament shall be passed jointly by the Government and the Parliament

82. (1) Bills may be presented by or on behalf of the King or by the Second Chamber of the Parliament

(2) Bills which require consideration by a joint session of the Parliament may be presented by or on behalf of the King or by a joint session of the Parliament insofar as this is consistent with the relevants of Chapter 2

(3) Bills to be presented by the Second Chamber or by a joint session of the Parliament shall be introduced in the Chamber or the joint session as the case may be by one or more members

83 Bills presented by or on behalf of the King shall be sent to the Second Chamber or to the joint session if consideration by a joint session of the Parliament is required

84. (1) A Bill presented by or on behalf of the King that has not yet been passed by the Second Chamber or by a joint session of the Parliament may be amended by the Chamber or the joint session as the case may be on the proposal of one or more members or by the Government

(2) Any Bill being presented by the Second Chamber or a joint session of the Parliament that has not yet been passed may be amended by the Chamber or joint session as the case may be on the proposal of one or more members or by the member or members introducing the Bill

85. As soon as the Second Chamber passes a Bill or resolves to present a Bill, it shall send it to the First Chamber which shall consider the Bill as sent to it by the Second Chamber. The Second Chamber may instruct one or more of its members to defend a Bill presented by it in the First Chamber

86. (1) A Bill may be withdrawn by or on behalf of the proposer until such time as it is passed by the Parliament

(2) A Bill which is to be presented by the Second Chamber or by a joint session of the Parliament may be withdrawn by the member or members introducing it until such time as it is passed

87. (1) A Bill shall become an Act of Parliament once it has been passed by the Parliament and ratified by the King

(2) The King and the Parliament shall inform each other of their decision on any Bill

88. The publication and entry into force of Acts of Parliament shall be regulated by Act of Parliament. They shall not enter into force before they have been published

89. (1) General administrative orders shall be established by Royal Decree

(2) Any regulations to which penalties are attached shall be embodied in such orders only in accordance with an Act of Parliament. The penalties to be imposed shall be determined by Act of Parliament

(3) Publication and entry into force of general administrative orders shall be regulated by Act of Parliament. They shall not enter into force before they have been published

(4) Paragraph (2) shall apply by analogy to other generally binding regulations laid down on behalf of the State for five years or until a time to be determined by or pursuant to Act of Parliament. These regulations shall not enter into force until they have been published

#### Section 2—Miscellaneous Provisions

90. The Government shall promote the development of the international rule of law

91. (1) The Kingdom shall not be bound by treaties, nor shall such treaties be denounced without the prior approval of the Parliament. The cases in which approval is not required shall be specified by Act of Parliament

(2) The manner in which approval shall be granted shall be laid down by Act of Parliament, which may provide for the possibility of tacit approval

(3) Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Chambers of the Parliament only if at least two-thirds of the votes cast are in favor

92. Legislative, executive, and judicial powers may be conferred on international institutions by or pursuant to a treaty, subject, where necessary, to the provisions of 91 (3).

93. Provisions of treaties and of resolutions by international institutions, which may be binding on all persons by virtue of their contents shall become binding after they have been published

94. Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions

95. Rules regarding the publication of treaties and decisions by international institutions shall be laid down by Act of Parliament.

96. (1) A declaration that the Kingdom is in a state of war shall not be made without the prior approval of the Parliament

(2) Such approval shall not be required in cases where consultation with Parliament proves to be impossible as a consequence of the actual existence of a state of war

(3) The two Chambers of the Parliament shall consider and decide upon the matter in joint session

(4) The provisions of the first and third paragraphs shall apply by analogy to a declaration that a state of war has ceased

97. (1) All Dutch nationals who are capable of doing so shall have a duty to cooperate in maintaining the independence of the State and defending its territory

(2) This duty may also be imposed on residents of the Netherlands who are not Dutch nationals

98. (1) To protect its interests, the State shall maintain Armed Forces consisting of volunteers and conscripts

(2) The Government shall have supreme authority over the Armed Forces

(3) Compulsory service in the Armed Forces shall be regulated by Act of Parliament. The obligations which may be imposed on persons not belonging to the Armed Forces in relation to the defence of the country shall also be regulated by Act of Parliament

99. The conditions on which exemption is granted from military service because of serious conscientious objections shall be specified by Act of Parliament

100. Foreign troops shall not be employed other than pursuant to an Act of Parliament

101. If all or any of the persons liable for compulsory military service but not actually serving in the Armed Forces at the time are called up by Royal Decree in time of war or threat of war or in other exceptional circumstances, a Bill shall be presented to the Parliament forthwith to regulate where necessary their continued service in the Armed Forces

102. (1) All expenses in connection with the armies of the State shall be met from Central Government funds

(2) No inhabitant or municipality may be required to assist with the billeting or maintenance of troops, or with transports or supplies of any description whatsoever requisitioned by the State for the armies or defenses of the country, other than in accordance with general rules laid down by Act of Parliament and upon payment of compensation

(3) Exceptions to the general rules shall be laid down by Act of Parliament for application in time of war or threat of war or in other exceptional circumstances

103. (1) The cases in which a state of emergency, as defined by Act of Parliament, may be declared by Royal Decree in order to maintain internal or external security shall be specified by Act of Parliament. The consequences of such a declaration shall be governed by Act of Parliament

(2) Such a declaration may depart from the provisions of the Constitution relating to the powers of the executive bodies of the provinces, municipalities, and water control boards, the basic rights laid down in 6, insofar as the exercise of the right contained in this other than in buildings and enclosed places is concerned, s 7, 8, 9, 12 (2), 13 and 113 (1) and (3).

(3) Immediately after the declaration of a state of emergency and whenever it considers it necessary, until such time as the state of emergency is terminated by Royal Decree, the Parliament shall decide the duration of the state of emergency. The two Chambers of the Parliament shall consider and decide upon the matter in joint session.

104. Taxes imposed by the State shall be levied pursuant to Act of Parliament. Other levies imposed by the State shall be regulated by Act of Parliament.

105. (1) The estimates of the State's revenues and expenditures shall be laid down by Act of Parliament.

(2) Bills containing general estimates shall be presented by or on behalf of the King every year on the date specified in 65.

(3) A statement of the State's revenues and expenditures shall be presented to the Parliament in accordance with the provisions of the relevant Act of Parliament. The balance sheet approved by the General Chamber of Audit shall be presented to the Parliament.

(4) Rules relating to the management of the State's finances shall be prescribed by Act of Parliament.

106. The monetary system shall be regulated by Act of Parliament.

107. (1) Civil law, criminal law and civil and criminal procedure shall be regulated by Act of Parliament in general legal codes without prejudice to the power to regulate certain matters in separate Acts of Parliament.

(2) The general rules of administrative law shall be laid down by Act of Parliament.

108. (1) The establishment, powers and procedures of any general independent bodies for investigating complaints relating to actions of the authorities shall be regulated by Act of Parliament.

(2) Appointment to such bodies shall be made by the Second Chamber of the Parliament if their jurisdiction covers the actions of the central authorities. Members may be dismissed in cases prescribed by Act of Parliament.

109. The legal status of public servants shall be regulated by Act of Parliament. Rules regarding employment protection and co-determination for public servants shall also be laid down by Act of Parliament.

110. In the exercise of their duties Government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.

111. Honours shall be established by Act of Parliament.

## CHAPTER 6

## THE ADMINISTRATION OF JUSTICE

112. (1) The judgement of disputes involving rights under civil law and debts shall be the responsibility of the judiciary

(2) Responsibility for the judgement of disputes which do not arise from matters of civil law may be granted by Act of Parliament either to the judiciary or to courts that do not form part of the judiciary. The method of dealing with such cases and the consequences of decisions shall be regulated by Act of Parliament

113. (1) The judgement of offenses shall also be the responsibility of the judiciary

(2) Disciplinary proceedings established by Government bodies shall be regulated by Act of Parliament

(3) A sentence entailing deprivation of liberty may be imposed only by the judiciary

(4) Different rules may be established by Act of Parliament for the trial of cases outside the Netherlands and for martial law

114. Capital punishment may not be imposed

115. Appeal to a higher administrative authority shall be admissible in the case of the disputes referred to in 112 (2)

116. (1) The courts which form part of the judiciary shall be specified by Act of Parliament

(2) The organization, composition and powers of the judiciary shall be regulated by Act of Parliament

(3) In cases provided for by Act of Parliament, persons who are not members of the judiciary may take part with members of the judiciary in the administration of justice

(4) The supervision of members of the judiciary responsible for the administration of justice of the manner in which such members and the persons referred to in the previous paragraph fulfil their duties shall be regulated by Act of Parliament

117. (1) Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree

(2) Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament

(3) In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament

(4) Their legal status shall in other respects be regulated by Act of Parliament

118. (1) The members of the Supreme Court of the Netherlands shall be appointed from a list of three persons drawn up by the Second Chamber of the Parliament

(2) In the cases and within the limits laid down by Act of Parliament, the Supreme Court shall be responsible for annulling court judgements which infringe the law (cassation)

(3) Additional duties may be assigned to the Supreme Court by Act of Parliament.

119. Present and former members of the Parliament, Ministers, and State Secretaries shall be tried by the Supreme Court for offenses committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Second Chamber

120. The constitutionality of Acts of Parliament and treaties shall not be renewed by the courts

121. Except in cases laid down by Act of Parliament, trials shall be held in public and judgements shall specify the grounds on which they are based. Judgements shall be pronounced in public

122. (1) Remission of sentence shall be granted by Royal Decree upon the recommendation of a court designated by Act of Parliament and with due regard to regulations to be laid down by or pursuant to Act of Parliament

(2) Pardons shall be granted by or pursuant to Act of Parliament

## CHAPTER 7

### PROVINCES, MUNICIPALITIES, AND OTHER PUBLIC BODIES

123. (1) Provinces and municipalities may be dissolved and new ones established by Act of Parliament

(2) Revisions to provincial and municipal boundaries shall be regulated by Act of Parliament

124. (1) The powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs

(2) Provincial and municipal administrative organs may be required by or pursuant to Act of Parliament to provide regulation and administration

125. (1) The provinces and municipalities shall be headed by provincial and municipal councils respectively. Their meetings shall be public except in cases provided for by Act of Parliament

(2) In addition, the administration of a province shall consist of the provincial executive and the King's Commissioner, the administration of a municipality shall consist of the municipal executive and the Mayor

(3) King's Commissioners and Mayors shall preside over the meetings of provincial councils and municipal councils respectively

126. The King's Commissioner may also be charged by Act of Parliament with the execution of official instructions to be given by the Government

127. Provincial and municipal by-laws shall be enacted by the provincial or municipal councils respectively, except in cases specified by Act of Parliament or by them pursuant to an Act of Parliament

128. Except in cases laid down in 123, the powers referred to in 124 (1) may be assigned to bodies other than those specified in 125 only by the provincial or municipal councils respectively

129. (1) The members of provincial and municipal councils shall be directly elected by Dutch nationals resident in the province or municipality as the case may be who satisfy the requirements laid down for elections to the Second Chamber of the Parliament. The same conditions apply to membership

(2) The members shall be elected by proportional representation within the boundaries to be laid down by Act of Parliament

(3) s 53 (2) and 59 shall apply

(4) The duration of provincial and municipal councils shall be four years unless otherwise provided for by Act of Parliament

(5) The positions which may not be held simultaneously with membership shall be specified by Act of Parliament. The Act may also provide that obstacles to membership will arise from family ties or marriage and that the commission of certain acts designated by Act of Parliament may result in loss of membership

(6) The members shall not be bound by a mandate or instructions when casting their votes

130. The right to elect members of a municipal council and the right to be a member of a municipal council may be granted by Act of Parliament to residents who are not Dutch nationals provided they fulfil at least the requirements applicable to residents who are Dutch nationals

131. The King's Commissioners and the Mayors shall be appointed by Royal Decree

132. (1) Both the organization of provinces and municipalities and the composition and powers of their administrative organs shall be regulated by Act of Parliament

(2) Supervision of the administrative organs shall be regulated by Act of Parliament

(3) Decisions by the administrative organs shall be subject to prior supervision only in cases specified by or pursuant to Act of Parliament

(4) Decisions by the administrative organs may be quashed only by Royal Decree and on the ground that they conflict with the law or the public interest

(5) Provisions in the event of non-compliance in matters of regulation and administration required under 124 (2), shall be regulated by Act of Parliament. Provisions may be made by Act of Parliament notwithstanding s 125 and 127 in cases of gross neglect of duty by the administrative organs of a province or municipality

(6) The taxes which may be levied by the administrative organs of provinces and municipalities and their financial relationships with the central government shall be regulated by Act of Parliament

133. (1) Insofar as it is not otherwise provided by or pursuant to Act of Parliament, the establishment or dissolution of water control boards, the regulation of their duties and organization together with the composition of their administrative organs shall be effected by provincial by-law according to rules laid down by Act of Parliament

(2) The legislative and other powers of the administrative organs of water control boards and public access to their meetings shall be regulated by Act of Parliament

(3) Supervision of these administrative organs by provincial and other bodies shall be regulated by Act of Parliament Decisions by the administrative organs may be quashed only if they conflict with the law or the public interest

134 (1) Public bodies for the professions and trades and other public bodies may be established and dissolved by or pursuant to Act of Parliament

(2) The duties and organization of such bodies, the composition, and powers of their administrative organs and public access to their meetings shall be regulated by Act of Parliament Legislative powers may be granted to their administrative organs by or pursuant to Act of Parliament

(3) Supervision of the administrative organs shall be regulated by Act of Parliament Decisions by the administrative organs may be quashed only if they are in conflict with the law or the public interest

135. Rules pertaining to matters in which two or more public bodies are involved shall be laid down by Act of Parliament These may provide for the establishment of a new public body, in which case 134 (2) and (3), shall apply

136 Disputes between public bodies shall be settled by Royal Decree unless they fall within the competence of the judiciary or decisions are referred to other bodies by Act of Parliament

## CHAPTER 8

### REVISION OF THE CONSTITUTION

137. (1) An Act of Parliament shall be passed stating that an amendment to the Constitution in the form proposed shall be considered

(2) The Second Chamber may divide a Bill presented for this purpose into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise

(3) The two Chambers of the Parliament shall be dissolved after the Act referred to in the first paragraph has been published

(4) The newly elected Chambers shall consider the Bill and it shall be passed only if at least two thirds of the votes cast are in favour

(5) The Second Chamber may divide a Bill for the amendment of the Constitution into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise, if at least two-thirds of the votes cast are in favour

138. (1) Before Bills to amend the Constitution which have been given a second reading have been ratified by the King, provisions may be introduced by Act of Parliament whereby

(a) the proposals adopted and the unamended provisions of the Constitution are adjusted to each other as required,

(b) the division into chapters, sections, and s and the headings and numbering thereof are modified

(2) A Bill containing provisions as referred to under paragraph (1)(a) shall be passed by the two Chambers only if at least two-thirds of the votes cast are in favor.

139. Amendments to the Constitution passed by the Parliament and ratified by the King shall enter into force immediately after they have been published

140. Existing Acts of Parliament and other regulations and decrees which are in conflict with an amendment to the Constitution shall remain in force until provisions are made in accordance with the Constitution

141. The text of the revised Constitution shall be published by Royal Decree in which the chapters, sections and s may be renumbered and references to them altered accordingly

142. The Constitution may be brought into line with the Charter for the Kingdom of the Netherlands by Act of Parliament s 139, 140 and 141 shall apply by analogy

## CHAPTER 9 ADDITIONAL

1. 2 (4) shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament

2. 4 shall not apply to general representative bodies existing at the time of the entry into force of 4 whose members are not elected in accordance with the provisions of that until such time as the election of the members of the body in question is arranged in accordance with 4

3. Insofar as it relates to the exercise other than in buildings or enclosed areas of the right referred to in 6 (1), 6 shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament

4. The following provision shall remain in force until such time as statutory measures provide otherwise

'The stipends, pensions and other forms of income of any sort received by various religious denominations or their ministers shall continue to be paid to the said denominations Ministers who do not receive a stipend from public funds, or who receive one that is insufficient, may be awarded a stipend or their existing stipend may be increased '

5. Insofar as it relates to the right of demonstration, 9 shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament

6. 10 (1) shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament This period may be extended by Act of Parliament for not more than five years Different dates may be set for the entry into force of the various areas of application of 10 (1)

7. 11 shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament This period may be extended by Act of Parliament for not more than five years Different dates may be set for the entry into force of the various areas of application of 11.

8. Except insofar as it relates, with respect to privacy of correspondence, to the mail or such other public body as may be entrusted with the carriage of mail, 13 shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament

9. 16 shall not apply to offenses made punishable under the Wartime Offenses Decree

10. 19 (3) shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament

11. The wording of the oaths and affirmations laid down in s 44, 53, and 54 of the 1972 text of the Constitution shall remain in force until provision is made by Act of Parliament

12. 86 (5) and (6) of the 1972 text of the Constitution shall remain in force until the Act of Parliament referred to in 49 has entered into force

13. Persons who are members of the Second Chamber when 52 enters into force shall vacate their seats at the beginning of the session of the Chamber elected under 55 unless the Chamber is dissolved earlier Anyone replacing a member who dies or ceases to hold office before that date shall also vacate his seat at the start of the aforementioned period

14. (1) As long as the right of Dutch nationals who are not residents of the Netherlands to vote in elections to the Second Chamber of the Parliament is not compatible with the Charter for the Kingdom of the Netherlands, 54 (1) shall read

'The members of the Second Chamber shall be directly elected by Dutch nationals who are resident in the Netherlands and have attained the age of eighteen'

(2) The time at which 54 (1) shall enter into force in the version referred to above shall be laid down by Royal Decree.

15. An Act of Parliament shall determine which of those persons disqualified from voting when the Act of Parliament adjusting the statutory provisions relating to disqualification from voting in accordance with 54 entered into force shall continue to be disqualified thereafter

16. 56 shall read twenty-one years in place of eighteen years until such time as the statutory age of majority is lowered to eighteen years. The time at which the first mentioned version shall enter into force shall be laid down by Royal Decree.

17. 106 (4) of the 1972 version of the Constitution shall remain in force until an Act of Parliament containing the relevant provisions has been passed.

18. s 97 and 101 (2) of the 1972 version of the Constitution shall remain in force until the Act of Parliament referred to in 69 has entered into force.

19. The wording of the proclamation of Acts of Parliament as laid down in 81 of the 1972 version of the Constitution, the wording of messages accompanying bills sent from one Chamber to the other or to the King and of the King's message to the Parliament containing his decision on the Bill as laid down in s 123, 124, 127, 128, and 130 of the 1972 version of the Constitution, shall remain in force until such time as other arrangements are made.

20. {...}

21. The provisions of the following s of the 1972 version of the Constitution shall remain in force until a relevant Act of Parliament has been passed:

(a) s 61 and 64 with reference to tacit approval;

(b) 62.

The provisions of s 61 and 64 of the 1972 version of the Constitution shall remain in force with regard to the tacit approval of agreements affecting the Netherlands Antilles as long as 24 of the 1975 version of the Charter for the Kingdom of the Netherlands applies.

22. 201 (4) of the 1972 version of the Constitution shall remain in force for five years or for a shorter period to be laid down by or pursuant to Act of Parliament.

23. 15 (2) may be disregarded by Acts of Parliament as referred to in 113 (1) for a period of five years after the entry of the latter into force.

24. Generally binding provisions regarding the legal status of public servants that do not derive from an Act of Parliament may be amended in the same way as they were established until the entry into force of an Act regulating the said legal status.

25. 74 (1) of the 1972 version of the Constitution shall remain in force until an Act of Parliament containing the relevant provisions has been passed.

26. 122 (1) shall enter into force after five years or on such earlier date as may be prescribed by or pursuant to Act of Parliament. Until then, the provisions of 122 (1) and (2) of the 1972 version of the Constitution shall remain in force.

27. As long as the age at which statutory minority ends has not been lowered to eighteen years, members of provincial and municipal councils shall be required, notwithstanding 129 (1), to have attained the age of twenty-one. The point at which the exception to 129 referred to in the previous sentence shall cease to apply shall be laid down by Royal Decree.

28 130 shall not enter into force as long as the grant of the right to vote and to stand for election in elections to municipal councils to residents who are not Netherlands nationals is not compatible with the Charter of the Kingdom of the Netherlands. The time at which the shall enter into force shall be laid down by Royal Decree.

29. Provisions in other regulations than the Act of Parliament under whose provisions disputes between public bodies are settled other than by Royal Decree shall remain in force for five years provided that settlement of such disputes has not been provided for by Act of Parliament within this period.

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# 26

## CONSTITUTION OF NORWAY

{Adopted on 17 May 1814}

### Section A.—Form of Government and Religion

#### 1. Integrity of the Kingdom

The Kingdom of Norway is a free, independent, indivisible and inalienable Realm Its form of Government is a limited and hereditary monarchy

#### 2 Religion, State Religion

(1) All inhabitants of the Realm shall have the right to free exercise of their religion

(2) The Evangelical-Lutheran religion shall remain the official religion of the State The inhabitants professing it are bound to bring up their children in the same

### Section B.—The Executive Power, the King and the Royal Family

#### 3. Executive Power

The Executive Power is vested in the King, or in the Queen if she has succeeded to the Crown pursuant to the provisions of 6 or 7 or 48 of this Constitution When the Executive Power is thus vested in the Queen, she has

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**Note**—It incorporates all amendments up to and including the one of 23 July 1995 For easier comparative searches, the term 'Storting' has been replaced by 'Parliament', 'Lagting' by 'Permanent Chamber', 'Odelsting' by 'General Chamber', and 'Ting' by 'Chamber'

all the rights and obligations which pursuant to this Constitution and the Law of the Land are possessed by the King

#### 4 Religion of the King

The King shall at all times profess the Evangelical-Lutheran religion, and uphold and protect the same

#### 5. Immunity of the King

The King's person is sacred, he cannot be censured or accused. The responsibility rests with his Council

#### 6. Succession

(1) The order of succession is lineal, so that only a child born in lawful wedlock of the Queen or King, or of one who is herself or himself entitled to the succession may succeed, and so that the nearest line shall take precedence over the more remote and the elder in the line over the younger

(2) An unborn child shall also be included among those entitled to the succession and shall immediately take her or his proper place in the line of succession as soon as she or he is born into the world

(3) The right of succession shall not, however, belong to any person who is not born in the direct line of descent from the last reigning Queen or King or a sister or brother thereof, or is herself or himself a sister or brother thereof

(4) When a Princess or Prince entitled to succeed to the Crown of Norway is born, her or his name and time of birth shall be notified to the first Parliament in session and be entered in the record of its proceedings

(5) For those born before the year 1971, 6 of the Constitution as it was passed on 18 November 1905 shall, however, apply. For those born before the year 1990 it shall nevertheless be the case that a male shall take precedence over a female

#### 7. Successor

If there is no Princess or Prince entitled to the succession, the King may propose his successor to the Parliament (Storting), which has the right to make the choice if the King's proposal is not accepted

#### 8. Majority Age of the King

(1) The age of majority of the King shall be laid down by law

(2) As soon as the King has attained the age prescribed by law, he shall make a public declaration that he is of age

#### 9. Oath of the King

(1) As soon as the King, being of age, accedes to the Government, he shall take the following oath before the Parliament (Storting)

"I promise and swear that I will govern the Kingdom of Norway in accordance with its Constitution and Laws, so help me God the Almighty and Omnipotent"

(2) If the Parliament (Storting) is not in session at the time, the oath shall be made in writing in the Council of State and be repeated solemnly by the King at the first subsequent Parliament (Storting)

10. { .. }

**11. Residence of the King**

(1) The King shall reside in the Realm and may not, without the consent of the Parliament (Storting), remain outside the Realm for more than six months at a time, otherwise he shall have forfeited, for his person, the right to the Crown

(2) The King may not accept any other Crown or Government without the consent of the Parliament (Storting), for which two-thirds of the votes are required

**12. Council of State**

(1) The King himself chooses a Council from among Norwegian citizens who are entitled to vote. This Council shall consist of a Prime Minister and at least seven other members

(2) More than half the number of the members of the Council of State shall profess the official religion of the State

(3) The King apportions the business among the members of the Council of State, as he deems appropriate. Under extraordinary circumstances, besides the ordinary members of the Council of State, the King may summon other Norwegian citizens, although no members of the Parliament (Storting), to take a seat in the Council of State

(4) Husband and wife, parent and child or two siblings may never sit at the same time in the Council of State

**13. Administration by the Council of State**

(1) During his travels within the Realm, the King may delegate the administration of the Realm to the Council of State. The Council of State shall conduct the Government in the King's name and on his behalf. It shall scrupulously observe the provisions of this Constitution, as well as such particular directives in conformity therewith as the King may instruct

(2) The matters of business shall be decided by voting, where in the event of the votes being equal, the Prime Minister, or in his absence the highest-ranking member of the Council of State who is present, shall have two votes

(3) The Council of State shall make a report to the King on matters of business which it thus decides

**14. State Secretaries**

The King may appoint State Secretaries to assist members of the Council of State with their duties outside the Council of State. Each State Secretary shall act on behalf of the member of the Council of State to whom he is attached to the extent determined by that member

## 15 { .. }

## 16 Public Worship

The King ordains all public church services and public worship, all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion follow the norms prescribed for them

## 17. Ordinances of the King

The King may issue and repeal Ordinances relating to commerce, customs tariffs, all economic sectors and the police, although these must not conflict with the Constitution or with the laws passed by the Parliament (Storting) (as hereinafter prescribed in s 77, 78 and 79) They shall remain in force provisionally until the next Parliament (Storting)

## 18 Collection of Taxes and Duties

As a general rule the King shall provide for the collection of the taxes and duties imposed by the Parliament (Storting)

## 19. Administration of State Property

The King shall ensure that the properties and prerogatives of the State are utilized and administered in the manner determined by the Parliament (Storting) and in the best interests of the general public

## 20. Right to Pardon

(1) The King shall have the right in the Council of State to pardon criminals after sentence has been passed. The criminal shall have the choice of accepting the King's pardon or submitting to the penalty imposed

(2) In proceedings which the General Chamber (Odelsting) causes to be brought before the Court of Impeachment, no pardon other than deliverance from the death penalty may be granted

## 21. Appointment of Officials

The King shall choose and appoint, after consultation with his Council of State, all senior civil, ecclesiastical and military officials. Before the appointment is made, such officials shall swear or, if by law exempted from taking the oath, solemnly declare obedience and allegiance to the Constitution and the King, although senior officials who are not Norwegian nationals may by law be exempted from this duty. The Royal Princes must not hold senior civil offices

## 22 Dismissing Members of the Council of State

(1) The Prime Minister and the other members of the Council of State, together with the State Secretaries, may be dismissed by the King without any prior court judgment, after he has heard the opinion of the Council of State on the subject. The same applies to senior officials employed in Government offices or in the diplomatic or consular service, to the highest-ranking civil and ecclesiastical officials, commanders of regiments and other military formations, commandants of forts and officers commanding warships. Whether pensions should be granted to senior officials thus dismissed shall be

determined by the next Parliament (Storting) In the interval they shall receive two-thirds of their previous pay

(2) Other senior officials may only be suspended by the King, and must then without delay be charged before the courts, but they may not, except by court judgment, be dismissed nor, against their will, transferred

(3) All senior officials may, without a prior court judgment, be discharged from office upon attaining the statutory age limit

### **23. Rewards**

(1) The King may bestow orders upon whomever he pleases, as a reward for distinguished services, and such orders must be publicly announced, but no rank or title other than that attached to any office The order exempts no one from the common duties and burdens of citizens, nor does it carry with it any preferential admission to senior official posts in the State Senior officials honourably discharged from office retain the title and rank of their office This does not apply, however, to members of the Council of State or the State Secretaries

(2) No personal, or mixed, hereditary privileges may henceforth be granted to anyone

### **24. Royal Household**

The King chooses and dismisses, at his own discretion, his Royal Household and Court Officials

### **25. Commander-in-Chief**

(1) The King is Commander-in-Chief of the land and naval forces of the Realm These forces may not be increased or reduced without the consent of the Parliament (Storting) They may not be transferred to the service of foreign powers, nor may the military forces of any foreign power, except auxiliary forces assisting against hostile attack, be brought into the Realm without the consent of the Parliament (Storting)

(2) The territorial army and the other troops which cannot be classed as troops of the line must never, without the consent of the Parliament (Storting), be employed outside the borders of the Realm

### **26. Declarations and Treaties**

(1) The King has the right to call up troops, to engage in hostilities in defence of the Realm and to make peace, to conclude and denounce conventions, to send and to receive diplomatic envoys

(2) Treaties on matters of special importance, and, in all cases, treaties whose implementation, according to the Constitution, necessitates a new law or a decision by the Parliament (Storting), are not binding until the Parliament (Storting) has given its consent thereto

### **27. Quorum and Attendance of the Council of State**

(1) All members of the Council of State shall, unless lawfully absent, attend the Council of State and no decision may be adopted there unless more than half the number of members are present

rules 28-31]

(2) A member of the Council of State who does not profess the official religion of the State shall not take part in proceedings on matters which concern the State Church

## 28 Proposals for Official Posts

Proposals regarding appointments to senior official posts and other matters of importance shall be presented in the Council of State by the member under whose department they come, and such matters shall be dealt with by him in accordance with the decision adopted in the Council of State. However, matters strictly relating to military command may, to the extent determined by the King, be excepted from proceedings in the Council of State

## 29. Delegation of Ministerial Duties

(1) If a member of the Council of State is lawfully prevented from attending the meeting and from presenting the matters coming under his department, these may be presented by another member temporarily appointed by the King for the purpose

(2) If so many members are lawfully prevented from attending that not more than half of the stipulated number are present, the requisite number of other men or women shall be temporarily appointed to take a seat in the Council of State

## 30. Minutes, "Duty" to Speak Up and Remonstrate

(1) All the proceedings of the Council of State shall be entered in its records. Diplomatic matters which the Council of State decides to keep secret shall be entered in a special record. The same applies to military command matters which the Council of State decides to keep secret

(2) Everyone who has a seat in the Council of State has the duty frankly to express his opinion, to which the King is bound to listen. But it rests with the King to make a decision according to his own judgment

(3) If any Member of the Council of State is of the opinion that the King's decision conflicts with the form of government or the laws of the Realm, or is clearly prejudicial to the Realm, it is his duty to make strong remonstrances against it, as well as to have his opinion entered in the records. A member who has not thus protested is deemed to have been in agreement with the King and shall be answerable in such manner as may be subsequently decided, and may be impeached by the General Chamber (Odelsting) before the Court of Impeachment

## 31 Countersignature

All decisions drawn up by the King shall, in order to become valid, be countersigned. The decisions relating to military command are countersigned by the person who has presented the matter, while other decisions are countersigned by the Prime Minister or, if he has not been present, by the highest-ranking member of the Council of State present

**32. Absentee Signature**

The decisions adopted by the Government during the King's absence shall be drawn up in the King's name and be signed by the Council of State

**33. { }****34. Titles**

The King shall make provisions concerning titles for those who are entitled to succeed to the Crown

**35. Advisory Seat of the Successor**

As soon as the heir to the Throne has completed her or his eighteenth year, she or he is entitled to take a seat in the Council of State, although without a vote or responsibility

**36. Consent to Marriage of the Successor**

(1) A Princess or Prince entitled to succeed to the Crown of Norway may not marry without the consent of the King. Nor may she or he accept any other Crown or Government without the consent of the King and the Parliament (Storting); for the consent of the Parliament (Storting) two-thirds of the votes are required

(2) If she or he acts contrary to this rule, they and their descendants forfeit their right to the Throne of Norway

**37. Immunity of the Successor**

The Royal Princesses and Princes shall not personally be answerable to anyone other than the King, or whomever he decrees to sit in judgment on them

**38. { }****39. Death of the King**

If the King dies and the heir to the Throne is still under age, the Council of State shall immediately summon the Parliament (Storting)

**40. Administration Without King**

Until the Parliament (Storting) has assembled and made provisions for the Government during the minority of the King, the Council of State shall be responsible for the administration of the Realm in accordance with the Constitution

**41. Temporary Execution of the Royal Powers**

If the King is absent from the Realm unless commanding in the field, or if he is so ill that he cannot attend to the Government, the person next entitled to succeed to the Throne shall, provided that he has attained the age stipulated for the King's majority, conduct the Government as the temporary executor of the Royal Powers. If this is not the case, the Council of State will conduct the administration of the Realm

**42 { . }**

**43. Trustees of the King During Minority**

The choice of trustees to conduct the Government on behalf of the King during his minority shall be undertaken by the Parliament (Storting)

**44. Oath of Temporary Executor**

(1) The Princess or Prince who, in the cases mentioned in 41, conducts the Government shall make the following oath in writing before the Parliament (Storting) "I promise and swear that I will conduct the Government in accordance with the Constitution and the laws, so help me God, the Almighty and Omniscient"

(2) If the Parliament (Storting) is not in session at the time, the oath shall be made in the Council of State and later be presented to the next Parliament (Storting)

(3) The Princess or Prince who has once made the oath shall not repeat it later

**45. Account of Temporary Government**

As soon as their conduct of the Government ceases, the trustees shall submit to the King and the Parliament (Storting) an account of the same

**46. Emergency Summons by Supreme Court**

If the persons concerned fail to summon the Parliament (Storting) immediately in accordance with 39, it becomes the unconditional duty of the Supreme Court, as soon as four weeks have elapsed, to arrange for the Parliament (Storting) to be summoned

**47. Education of the King during Minority**

The supervision of the education of the King during his minority should, if both his parents are dead and neither of them has left any written directions thereon, be determined by the Parliament (Storting)

**48. Choice of New Dynasty**

If the Royal Line has died out, and no successor to the Throne has been designated, then a new Queen or King shall be chosen by the Parliament (Storting) Meanwhile, the executive power shall be exercised in accordance with 40

**Section C.—Rights of Citizens and the Legislative Power****49. Legislative Power**

The people exercises the legislative power through the Parliament (Storting), which consists of two departments, the Permanent Chamber (Lagting) and the General Chamber (Odelsting)

**50. Electoral Rights**

(1) Those entitled to vote are Norwegian citizens, men and women, who, at the latest in the year when the election is held, have completed their 18th year

(2) The extent, however, to which Norwegian citizens who on election day are resident outside the Realm but who satisfy the aforementioned conditions are entitled to vote shall be determined by law.

(3) Rules may be laid down by law concerning the right to vote of persons, otherwise entitled to vote, who on election day are mentally suffering from a seriously weakened mental state or a reduced level of consciousness.

### 51. Voter Registration

The rules on the keeping of the poll list and on the registration in the poll list of persons entitled to vote shall be determined by law.

### 52. {Repealed}

### 53. Loss of Electoral Rights

The right to vote is lost by persons:

a) sentenced for criminal offences, in accordance with the relevant provisions laid down by law.

b) entering the service of a foreign power without the consent of the Government.

c) {repealed}

d) demonstrably guilty of having bought votes, of having sold his own vote, or of having voted at more than one polling station.

e) {repealed}

### 54. Term, Re-Election

The polls shall be held every fourth year. They shall be concluded by the end of September.

### 55. Conduct of Polls

The polls shall be conducted in the manner prescribed in law. Questions regarding the right to vote shall be settled by the poll officials, and decisions may be appealed to the Parliament (Storting).

### 56. {Repealed}

### 57. Number of Representatives in the Parliament

The number of representatives to be elected to the Parliament (Storting) shall be one hundred and sixty-five.

### 58. Constituencies

(1) Each county constitutes a constituency.

(2) One hundred and fifty-seven of the Representatives of the Parliament (Storting) are elected as representatives of constituencies as an equal number of representatives are elected so as to achieve a greater degree of proportionality.

(3) Representatives of constituencies are distributed among the constituencies of the Realm as follows:

8 are elected from the county of Oslo.

- 15 from Oslo,
- 12 from the county of Akershus,
- 8 from the county of Hedmark,
- 7 from the county of Oppland,
- 7 from the county of Buskerud,
- 7 from the county of Vestfold,
- 6 from the county of Telemark,
- 4 from the county of Aust-Agder,
- 5 from the county of Vest-Agder,
- 10 from the county of Rogaland,
- 15 from the county of Hordaland,
- 5 from the county of Sogn og Fjordane,
- 10 from the county of More og Romsdal,
- 10 from the county of Sor-Trondelag,
- 6 from the county of Nord-Trondelag,
- 12 from the county of Nordland,
- 6 from the county of Troms, and
- 4 from the county of Finnmark

#### 59 Polls in Municipalities, Proportional Representation, Quorum

- (1) Each municipality constitutes a separate polling district
- (2) The polls shall be held separately for each polling district. At the polls votes shall be cast directly for representatives to the Parliament (Storting), together with their proxies, to represent the entire constituency
- (3) The election of representatives of constituencies is based on proportional representation and the seats are distributed among the political parties in accordance with the following rules
- (4) The total number of votes cast for each party within each separate constituency is divided by 1, 4, 3, 5, 7 and so on until the number of votes cast is divided as many times as the number of seats that the party in question may expect to obtain. The party which in accordance with the foregoing obtains the largest quotient is allotted the first seat, while the second seat is allotted to the party with the second largest quotient, and so on until all the seats are distributed. If several parties have the same quotient, lots are drawn to decide to which party the seat shall be allotted. List alliances are not permitted
- (5) The seats at large are distributed among the parties taking part in such distribution on the basis of the relation between the total number of votes cast for the individual parties in the entire Realm in order to achieve the highest possible degree of proportionality among the parties. The total number of seats in the Parliament (Storting) to be held by each party is determined by applying the rules concerning the distribution of constituency seats correspondingly to the entire Realm and to the parties taking part in the distribution of the seats at large. The parties are then allotted so many seats at

large that these, together with the constituency seats already allotted, correspond to the number of seats in the Parliament (Storting) to which the party in question is entitled in accordance with the foregoing. If according to these rules two or more parties are equally entitled to a seat, preference shall be given to the party receiving the greatest number of votes or, in the event of a tie, the one which is chosen by drawing lots. If a party has already through the distribution of constituency seats obtained a greater number of seats than that to which it is entitled in accordance with the foregoing, a new distribution of the seats at large shall be carried out exclusively among the other parties, in such a way that no account is taken of the number of votes cast for and constituency seats obtained by the said party.

(6) No party may be allotted a seat at large unless it has received at least 4 per cent of the total number of votes cast in the entire Realm.

(7) The seats at large obtained by a party are distributed among that party's lists of candidates for constituency elections so that the first seat is allotted to the list left with the largest quotient after the constituency's seats are distributed, the second seat to the list with the second largest quotient, and so on until all the party's seats at large have been distributed.

#### **60. Absentee Ballot**

Whether and in what manner those entitled to vote may deliver their ballot papers, without personal attendance at the polls, shall be determined by law.

#### **61. Residence Requirement**

No one is eligible as a representative to the Parliament (Storting) unless he has resided for 10 years in the Realm, as well as being entitled to vote.

#### **62. Incompatibilities**

(1) Officials who are employed in Government departments, except however the State Secretaries, or officials and pensioners of the court, may not be elected as representatives to the Parliament (Storting). The same applies to officials employed in the diplomatic or consular services.

(2) Members of the Council of State may not attend meetings of the Parliament (Storting) as representatives while holding a seat in the Council of State. Nor may the State Secretaries attend as representatives while holding their appointments.

#### **63. Duty to Accept Election**

(1) It is the duty of anyone who is elected as a representative to accept such election, unless

a) he is elected outside the constituency in which he is entitled to vote,

b) he has as a representative attended all the sessions of the Parliament (Storting) following the previous election,

c) he has completed his sixtieth year at the latest in the year when the General Election is held,

d) he is a member of a political party and he is elected on a list of candidates which has not been issued by that party.

(2) If anyone is elected as a representative without being bound to accept such election, he must, within the time and in the manner prescribed by law, make a declaration stating whether or not he accepts election.

(3) It shall similarly be prescribed by law by what date and in which manner anyone who is elected as representative for two or more constituencies shall state which election he will accept.

#### 64. Credentials of Representatives

The representatives elected shall be furnished with credentials, the validity of which shall be adjudged by the Parliament (Storting).

#### 65. Reimbursement and Remuneration of Representatives

(1) Every representative and proxy called to the Parliament (Storting) shall be entitled to receive from the Treasury such reimbursement as is prescribed by law for travelling expenses to and from the Parliament (Storting), and from the Parliament (Storting) to his home and back again during vacations lasting at least fourteen days.

(2) He shall further be entitled to remuneration, likewise prescribed by law, for attending the Parliament (Storting).

#### 66. Immunity

Representatives on their way to and from the Parliament (Storting), as well as during their attendance there, shall be exempt from personal arrest, unless they are apprehended in public crimes, nor may they be called to account outside the meetings of the Parliament (Storting) for opinions expressed there. Every representative shall be bound to conform to the rules of procedure therein adopted.

#### 67. Membership in Parliament

The representatives elected in the aforesaid manner shall constitute the Parliament (Storting) of the Kingdom of Norway.

#### 68. Assembly of Parliament

The Parliament (Storting) shall as a rule assemble on the first weekday in October every year in the capital of the Realm, unless the King, by reason of extraordinary circumstances, such as hostile invasion or infectious disease, designates another town in the Realm for the purpose. Such a decision must be publicly announced in good time.

#### 69. Summoning by the King

When the Parliament (Storting) is not assembled, it may be summoned by the King if he feels it necessary.

#### 70. *(Repealed)*

**71. Term of Parliament**

The members of the Parliament (Storting) function as such for four successive years

**72. {*Repealed*}****73. Chambers of Parliament**

(1) The Parliament (Storting) nominates from among its members one fourth to constitute the Permanent Chamber (*Lagting*), the remaining three-fourths to constitute the General Chamber (*Odelsting*). This nomination shall take place at the first session of the Parliament (Storting) that assembles after a new General Election, whereafter the Permanent Chamber (*Lagting*) shall remain unchanged at all sessions of the Parliament (Storting) assembled after the same election, except insofar as any vacancy which may occur among its members has to be filled by special nomination

(2) Each Chamber (*Ting*) holds its meetings separately and nominates its own President and Secretary. Neither Chamber (*Ting*) may hold a meeting unless at least half of its members are present. However, Bills concerning amendments to the Constitution may not be dealt with unless at least two thirds of the members of the Parliament (Storting) are present

**74. Opening Speech of the King**

(1) As soon as the Parliament (Storting) is constituted, the King, or whoever he appoints for the purpose, shall open its proceedings with a speech, in which he shall inform it of the state of the Realm and of the issues to which he particularly desires to call the attention of the Parliament (Storting). No deliberations may take place in the presence of the King

(2) When the proceedings of the Parliament (Storting) have been opened, the Prime Minister and the members of the Council of State have the right to attend the Parliament (Storting), as well as both departments of the Parliament (Storting), and, like its members, although without voting, to take part in any proceedings conducted in open session, while in matters discussed in closed session only insofar as permitted by the Chamber (*Ting*) concerned

**75. Powers of Parliament**

It devolves upon the Parliament (Storting)

a) to enact and repeal laws, to impose taxes, dues, customs and other public charges, which shall not, however, remain operative beyond 31 December of the succeeding year, unless they are expressly renewed by a new Parliament (Storting),

b) to raise loans in the name of the Realm,

c) to supervise the monetary affairs of the Realm,

d) to appropriate the moneys necessary to meet Government expenditure,

e) to decide how much shall be paid annually to the King for the Royal Household, and to determine the Royal Family's appanage which may consist of real property,

f) to have submitted to it the records of the Council of State, and all public reports and documents;

g) to have communicated to it the conventions and treaties which the King, on behalf of the State, has concluded with foreign powers,

h) to have the right to require anyone, the King and the Royal Family excepted, to appear before it on matters of State, the exception does not, however, apply to the Royal Princes if they hold any public office,

i) to review the provisional lists of salaries and pensions and to make therein such alterations as it deems necessary,

j) {repealed}

k) to appoint five auditors, who shall annually examine the State Accounts and publish extracts of the same in print, for which purpose the Accounts shall be submitted to the auditors within six months of the end of the year for which the appropriations of the Parliament (Storting) have been made, and to adopt provisions concerning the procedure for authorizing the accounts of Government accounting officials,

l) to appoint a person, not a member of the Parliament (Storting), in a manner prescribed by law, to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen,

m) to naturalize aliens

#### 76 Legislation

(1) Every Bill shall first be proposed in the General Chamber (Odelstung), either by one of its own members, or by the Government through a member of the Council of State

(2) If the Bill is passed, it is sent to the Permanent Chamber (Lagting), which either approves or rejects it, and in the latter case returns it with appended comments. These are taken into consideration by the General Chamber (Odelstung), which either shelves the bill or again sends it to the Permanent Chamber (Lagting), with or without alteration

(3) When a Bill from the General Chamber (Odelstung) has twice been presented to the Permanent Chamber (Lagting) and has been returned a second time as rejected, the Parliament (Storting) shall meet in plenary session, and the Bill is then decided by a majority of two-thirds of its votes

(4) Between each such deliberation there shall be an interval of at least three days

#### 77 Royal Assent

When a Bill passed by the General Chamber (Odelstung) has been approved by the Permanent Chamber (Lagting) or by the Parliament (Storting) in plenary session, it is sent to the King, with a request that it may receive the Royal Assent

**78. Royal Signature**

(1) If the King assents to the Bill, he appends his signature, whereby it becomes law

(2) If he does not assent to it, he returns it to the General Chamber (Odelsting) with a statement that he does not for the time being find it expedient to sanction it. In that case the Bill must not again be submitted to the King by the Parliament (Storting) then assembled

**79. Enactment of Bills**

If a Bill has been passed unaltered by two sessions of the Parliament (Storting), constituted after two separate successive elections and separated from each other by at least two intervening sessions of the Parliament (Storting), without a divergent Bill having been passed by any Parliament (Storting) in the period between the first and last adoption, and it is then submitted to the King with a petition that His Majesty shall not refuse his assent to a Bill which, after the most mature deliberation, the Parliament (Storting) considers to be beneficial, it shall become law even if the Royal Assent is not accorded before the Parliament (Storting) goes into recess

**80. Sessions and Recesses**

(1) The Parliament (Storting) shall remain in session as long as it deems it necessary and shall terminate its proceedings when it has concluded its business

(2) In accordance with the rules of procedure adopted by the Parliament (Storting), the proceedings may be resumed, but they shall terminate not later than the last Sunday in the month of September.

(3) Within this time the King shall communicate his decision with regard to the Bills that have not already been decided (cf. ss 77 to 79), by either confirming or rejecting them. All those which he does not expressly accept are deemed to have been rejected by him

**81. Assent and Confirmation**

All Acts (with the exception of those mentioned in 79) are drawn up in the name of the King under the seal of the Realm of Norway, and in the following terms:

"We, X, make it publicly known that the decision of the Parliament (Storting) of the date stated has been laid before Us (here follows the decision). In consequence whereof We have assented to and confirmed as We hereby do assent to and confirm the same as Law under Our Hand and the Seal of the Realm"

**82. {Repealed}****83. Expertise of the Supreme Court**

The Parliament (Storting) may obtain the opinion of the Supreme Court on points of law

**84. Publicity of the Parliament**

The Parliament (Storting) shall meet in open session, and its proceedings shall be published in print, except in those cases where a majority decides to the contrary

**85. Treason Against the Country**

Any person who obeys an order, the purpose of which is to disturb the liberty and security of the Parliament (Storting), is thereby guilty of treason against the Country

**Section D—The Judicial Power****86. Court of Impeachment**

(1) The Court of Impeachment pronounces judgment in the first and last instance in such proceedings as are brought by the General Chamber (Odelsting) against members of the Council of State, or of the Supreme Court or of the Parliament (Storting), for criminal offences which they may have committed in their official capacity

(2) The specific rules concerning indictment by the General Chamber (Odelsting) in accordance with this shall be determined by law. However, the limitation period for the institution of indictment proceedings before the Court of Impeachment may not be set at less than 15 years

(3) The permanent members of the Permanent Chamber (Lagting) and the permanently appointed members of the Supreme Court are judges of the Court of Impeachment. The provisions contained in 87 shall apply to the composition of the Court of Impeachment in the particular case. In the Court of Impeachment the President of the Permanent Chamber (Lagting) shall preside

(4) Any person sitting in the Court of Impeachment as a Member of the Permanent Chamber (Lagting) shall not resign from the Court if the period for which he is elected as a representative to the Parliament (Storting) expires before the Court of Impeachment has concluded the trial of the case. If he ceases, for any other reason, to be a member of the Parliament (Storting), he shall resign as a Judge of the Court of Impeachment. The same applies if a Justice of the Supreme Court, who is a member of the Court of Impeachment, retires as a member of the Supreme Court

**87. Members of the Court of Impeachment**

(1) The accused and the person acting on behalf of the General Chamber (Odelsting) in the proceedings have the right to challenge as many members of the Permanent Chamber (Lagting) and of the Supreme Court as will leave remaining fourteen members of the Permanent Chamber (Lagting) and seven members of the Supreme Court as judges in the Court of Impeachment. Each party in the proceedings may challenge an equal number of the members of the Permanent Chamber (Lagting), although the accused has the preferential right to challenge one more, if the number to be challenged is not divisible by two. The same shall apply to the challenging of the members of the Supreme

Court If there are several accused in such proceedings, they exercise the right of challenge collectively in accordance with rules prescribed by law If the right of challenge is not exercised to the extent permitted, as many members of the Permanent Chamber (Lagting) and of the Supreme Court as are in excess of fourteen and seven respectively retire following the drawing of lots

(2) When the case comes up for judgment, as many judges of the Court of Impeachment shall retire following the drawing of lots that the Court due to render judgment is left with fifteen members, of whom at most ten are Members of the Permanent Chamber (Lagting) and five Justices of the Supreme Court

(3) The President of the Court of Impeachment and the President of the Supreme Court shall in no case retire following the drawing of lots

(4) If the Court of Impeachment cannot be composed of as many members of the Permanent Chamber (Lagting) or of the Supreme Court as prescribed above, the case may nevertheless be tried and judgment rendered, provided that the Court numbers at least ten Judges

(5) Specific provisions as to the procedure to be followed in the composition of the Court of Impeachment shall be laid down by law

#### **88. Supreme Court**

(1) The Supreme Court pronounces judgment in the final instance Nevertheless, limitations on the right to bring a case before the Supreme Court may be prescribed by law

(2) The Supreme Court shall consist of a President and at least four other members

#### **89. {Repealed}**

#### **90. No Appeal on Supreme Court Judgments**

The judgments of the Supreme Court may in no case be appealed

#### **91. Eligibility to Supreme Court**

No one may be appointed a member of the Supreme Court before reaching 30 years of age

### **Section E—General Provisions**

#### **92. Eligibility to Public Offices**

(1) To senior official posts in the State may be appointed only Norwegian citizens, men or women, who speak the language of the country, and who at the same time

a) either were born in the Realm of parents who were then subjects of the State,

b) or were born in a foreign country of Norwegian parents who were not at that time subjects of another State,

c) or hereafter have resided for ten years in the Realm,

d) or have been naturalized by the Parliament (Storting)

(2) Others may, however, be appointed as teachers at the university and institutions of higher learning, as medical practitioners and as consuls in places abroad

### 93. Transfer of Sovereignty Rights to International Organizations

(1) In order to safeguard international peace and security or to promote the international rule of law and cooperation between nations, the Parliament (Storting) may, by a three-fourths majority, consent that an international organization to which Norway adheres or will adhere shall have the right, within objectively defined fields, to exercise powers which in accordance with this Constitution are normally vested in the Norwegian authorities, although not the power to alter this Constitution. For the Parliament (Storting) to grant such consent, at least two thirds of the members of the Parliament (Storting) shall be present, as required for proceedings for amending the Constitution

(2) The provisions of this do not apply in cases of membership in an international organization, whose decisions only have application for Norway purely under international law

### 94. General Civil and Criminal Code

(1) The first, or if this is not possible, the second ordinary Parliament (Storting), shall make provision for the publication of a new general civil and criminal code. However the currently applicable laws of the State shall remain in force, provided they do not conflict with this Constitution or with such provisional ordinances as may be issued in the meantime

(2) The existing permanent taxes shall likewise remain operative until the next Parliament (Storting)

### 95. Equality Before the Law

No dispensations, protection from civil arrest, moratoriums or redresses may be granted after the new general code has entered into force

### 96. Presumption of Innocence, Prohibition of Torture

No one may be convicted except according to law, or be punished except after a court judgment. Interrogation by torture must not take place

### 97. Nulla poena sine lege, Prohibition of Retroactive Laws

No law must be given retroactive effect

### 98. Court Fees

When special fees are paid to officials of the courts of justice, no further payment shall be made to the Treasury in respect of the same matter

### 99. Arrest, Military Force

(1) No one may be taken into custody except in the cases determined by law and in the manner prescribed by law. For unwarranted arrest, or illegal detention the officer concerned is accountable to the person imprisoned

(2) The Government is not entitled to employ military force against citizens of the State, except in accordance with the forms prescribed by law,

unless any assembly disturbs the public peace and does not immediately disperse after the s of the Statute Book relating to riots have been read out clearly three times by the civil authority

#### **100. Press, Expression**

There shall be liberty of the Press No person may be punished for any writing, whatever its contents, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience to the laws, contempt of religion, morality or the constitutional powers, or resistance to their orders, or has made false and defamatory accusations against anyone Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever

#### **101. No Privileges in Trade and Industry**

New and permanent privileges implying restrictions on the freedom of trade and industry must not in future be granted to anyone

#### **102. Search**

Search of private homes shall not be made except in criminal cases

#### **103. Bankruptcy**

Asylum for the protection of debtors shall not be granted to such persons as hereafter become bankrupt

#### **104. No Forfeiture of Property**

Land and goods may in no case be made subject to forfeiture

#### **105. Expropriation, Compensation**

If the welfare of the State requires that any person shall surrender his movable or immovable property for the public use, he shall receive full compensation from the Treasury

#### **106. Charitable Purposes**

The purchase money, as well as the revenues of the landed property constituting ecclesiastical benefices, shall be applied solely to the benefit of the clergy and to the promotion of education The property of charitable institutions shall be applied solely to the benefit of the institutions themselves

#### **107. Preservation of Allodium and Primogeniture**

Allodial right {i.e., an Anglo-Saxon form of real estate in absolute control of the owner without any rents, services etc.} and the right of primogeniture {i.e., exclusive inheritance by the firstborn} shall not be abolished The specific conditions under which these rights shall continue for the greatest benefit of the State and to the best advantage of the rural population shall be determined by the first or second subsequent Parliament (Storting)

#### **108. No New Nobility and Fideicommissa**

No earldoms, baronies, entailed estates or fideicommissa may be created in the future

**109 Defence, Military Service**

(1) As a general rule every citizen of the State is equally bound to serve in the defence of the country for a specific period, irrespective of birth or fortune

(2) The application of this principle, and the restrictions to which it shall be subject, shall be determined by law

**110. Work, Unions**

(1) It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work

(2) Specific provisions concerning the right of employees to co-determination at their work place shall be laid down by law

**110a Minority Rights of the Sami**

It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life

**110b Environment**

(1) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well

(2) In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced

(3) The State authorities shall issue further provisions for the implementation of these principles

**110c Human Rights**

It is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties hereof shall be determined by law

**111 State Symbols**

The form and colours of the Norwegian Flag shall be determined by law

**112 Amendments**

(1) If experience shows that any part of this Constitution of the Kingdom of Norway ought to be amended, the proposal to this effect shall be submitted to the first, second or third Parliament (Storting) after a new General Election and be publicly announced in print. But it shall be left to the first, second or third Parliament (Storting) after the following General Election to decide whether or not the proposed amendment shall be adopted. Such amendment must never however, contradict the principles embodied in this Constitution, but solely relate to modifications of particular provisions which do not alter

the spirit of the Constitution, and such amendment requires that two thirds of the Parliament (Storting) agree thereto

(2) An amendment to the Constitution adopted in the manner aforesaid shall be signed by the President and the Secretary of the Parliament (Storting), and shall be sent to the King for public announcement in print, as an applicable provision of the Constitution of the Kingdom of Norway

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27

CONSTITUTION  
OF  
ISLAMIC REPUBLIC OF PAKISTAN

[12th April, 1973]

PREAMBLE

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust,

And whereas it is the will of the people of Pakistan to establish an order

Wherein the State shall exercise its powers and authority through the chosen representatives of the people,

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed,

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah,

Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures,

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed,

Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality,

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes,

Wherein the independence of the judiciary shall be fully secured,

Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded,

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity

Now, therefore, we, the people of Pakistan,

Cognisant of our responsibility before Almighty Allah and men,

Cognisant of the sacrifices made by the people in the cause of Pakistan,

Faithful to the declaration made by the Founder of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah, that Pakistan would be a democratic State based on Islamic principles of social justice,

Dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny,

Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order,

Do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this Constitution

## PART I

### INTRODUCTORY

1. (1) Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan

(2) The territories of Pakistan shall comprise—

(a) the Provinces of Baluchistan, the North-West Frontier, the Punjab and Sind,

(b) the Islamabad Capital Territory, hereinafter referred to as the Federal Capital,

(c) Federally Administered Tribal Areas, and

(d) such States and territories as are or may be included in Pakistan, whether by accession or otherwise

(3) Majlis-e-Shoora (Parliament) may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit

2. Islam shall be the State religion of Pakistan and the Injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the Parliament and Provincial Assemblies, and for policy making by the Government

2A. The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly

3. The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work

4 (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan

(2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law,

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law, and

(c) no person shall be compelled to do that which the law does not require him to do

5. (1) Loyalty to the State is the basic duty of every citizen

(2) Obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever he may be and of every other person for the time being within Pakistan.

6. (1) Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason

(2) Any person aiding or abetting the acts mentioned in clause (1) shall likewise be guilty of high treason

(3) Majlis-e-Shoora (Parliament) shall by law provide for the punishment of persons found guilty of high treason

## PART II

### FUNDAMENTAL RIGHTS AND PRINCIPLES OF POLICY

7. In this Part, unless the context otherwise requires, "the State" means the Federal Government, Majlis-e-Shoora (Parliament), a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess

## CHAPTER 1

### FUNDAMENTAL RIGHTS

8 (1) Any law or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void

(3) The provisions of this Article shall not apply to—

(a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

(b) any of the—

(i) laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule,

(ii) other laws specified in Part I of the First Schedule,

and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring the laws specified in Part II of the First Schedule into conformity with the rights conferred by this Chapter

Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months

Explanation —If in respect of any law *Maylis-e-Shoora* (Parliament) is the appropriate Legislature, such resolution shall be a resolution of the National Assembly

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution

9. No person shall be deprived of life or liberty save in accordance with law

10. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before a Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorise the detention of a person for a period exceeding three months unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for

## Article 10]

such detention, and, if the detention is continued after the said period of three months, unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention

*Explanation I*—In this Article, "the appropriate Review Board" means,

(i) in the case of a person detained under a Federal law, a Board appointed by the Chief Justice of Pakistan and consisting of a Chairman and two other persons, each of whom is or has been a Judge of the Supreme Court or a High Court, and

(ii) in the case of a Person detained under a Provincial law, a Board appointed by the Chief Justice of the High Court concerned and consisting of a Chairman and two other persons, each of whom is or has been a Judge of a High Court

*Explanation II*—The opinion of a Review Board shall be expressed in terms of the views of the majority of its members

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, within fifteen days from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose

(6) The authority making the order shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced

(7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case

Provided that this clause shall not apply to any person who is employed by or works for, or acts on instructions received from, the enemy or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a Federal law or is a member of any association which has for its objects, or which indulges in any such anti-national activity

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family

(9) Nothing in this Article shall apply to any person who for the time being is an enemy alien

11. (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form

(2) All forms of forced labour and traffic in human beings are prohibited

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment

(4) Nothing in this Article shall be deemed to affect compulsory service—

(a) by any person undergoing punishment for an offence against any law, or

(b) required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity

12. (1) No law shall authorize the punishment of a person—

(a) for an act or omission that was not punishable by law at the time of the act or omission, or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed

(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence

13. No person—

(a) shall be prosecuted or punished for the same offence more than once, or

(b) shall, when accused of an offence, be compelled to be a witness against himself

14. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable

(2) No person shall be subjected to torture for the purpose of extracting evidence

15. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof

16. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order

17. (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government

declare that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final

(3) Every political party shall account for the source of its funds in accordance with law

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business

Provided that nothing in this Article shall prevent

(a) the regulation of any trade or profession by a licensing system, or

(b) the regulation of trade, commerce or industry in the interest of free competition therein, or

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons

19 Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence

20. Subject to law, public order and morality—

(a) every citizen shall have the right to profess, practise and propagate his religion, and

(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions

21. No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own

22 (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation

(3) Subject to law—

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens

23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest

24. (1) No person shall be compulsorily deprived of his property save in accordance with law

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given

(3) Nothing in this Article shall affect the validity of —

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health, or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law, or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law), or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner, or

(e) any law providing for the acquisition of any class of property for the purpose of—

(i) providing education and medical aid to all or any specified class of citizens or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens, or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves, or

(f) any existing law or any law made in pursuance of Article 253

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court

25. (1) All citizens are equal before law and are entitled to equal protection of law

(2) There shall be no discrimination on the basis of sex alone

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children

26. (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen, on the ground only of race, religion, caste, sex, residence or place of birth

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children

27. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. Provided that, for a period not exceeding forty years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan. Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province. For a period not exceeding three years, prior to appointment under that Government or authority

28. Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose

## CHAPTER 2

### PRINCIPLES OF POLICY

29. (1) The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources

(3) In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each Province in relation to the affairs of his Province shall cause to be prepared and laid before the National Assembly or, as the case may be, the Provincial Assembly, a report on the observance and

implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the National Assembly or, as the case may be, the Provincial Assembly, for discussion on such report

30. (1) The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the Principles of Policy is that of the organ or authority of the State, or of the person, concerned

(2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State or any organ or authority of the State or any person on such ground

31. (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah

(2) The State shall endeavour, as respects the Muslims of Pakistan

(a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran,

(b) to promote unity and the observance of the Islamic moral standards, and

(c) to secure the proper organisation of zakat, ushr, auqaf and mosques

32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women

33. The State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens

34. Steps shall be taken to ensure full participation of women in all spheres of national life

35. The State shall protect the marriage, the family, the mother and the child

36. The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services

37. The State shall—

(a) promote, with special care, the educational and economic interests of backward classes or areas,

(b) remove illiteracy and provide free and compulsory secondary education within minimum possible period,

(c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit,

- (d) ensure inexpensive and expeditious justice,
- (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment,
- (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan,
- (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements,
- (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and
- (i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public

**38. The State shall —**

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants,
- (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure,
- (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means,
- (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment,
- (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan, and
- (f) eliminate riba as early as possible

**39 The State shall enable people from all parts of Pakistan to participate in the Armed Forces of Pakistan**

**40 The State shall endeavour to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity, support the common interests of the peoples of Asia, Africa and Latin America, promote international peace and security, foster goodwill and friendly relations among all nations and encourage the settlement of international disputes by peaceful means**

**PART III**  
**THE FEDERATION OF PAKISTAN**

**CHAPTER 1**  
**THE PRESIDENT**

41. (1) There shall be a President of Pakistan who shall be the Head of State and shall represent the unity of the Republic

(2) A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age and is qualified to be elected as member of the National Assembly

(3) The President to be elected after the expiration of the term specified in clause (7) shall be elected in accordance with the provisions of the Second Schedule by the members of an electoral college consisting of—

(a) the members of both Houses, and

(b) the members of the Provincial Assemblies

(4) Election to the office of President shall be held not earlier than sixty days and not later than thirty days before the expiration of the term of the President in office, Provided that, if the election cannot be held within the period aforesaid because the National Assembly is dissolved, it shall be held within thirty days of the general election to the Assembly

(5) An election to fill a vacancy in the office of President shall be held not later than thirty days from the occurrence of the vacancy

Provided that, if the election cannot be held within the period aforesaid because the National Assembly is dissolved, it shall be held within thirty days of the general election to the Assembly

(6) The validity of the election of the President shall not be called in question by or before any court or other authority

(7) Notwithstanding anything contained in this Article or Article 43, or any other Article of the Constitution or any other law, General Mohammad Zia-ul-Haq, in consequence of the result of the referendum held on the nineteenth day of December 1984, shall become the President of Pakistan on the day of the first meeting of Majlis-e-Shoora (Parliament) in joint sitting summoned after the elections to the Houses of Majlis-e-Shoora (Parliament) and shall hold office for a term of five years from that day, and Article 44 and other provisions of the Constitution shall apply accordingly

42 Before entering upon office, the President shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule

43 (1) The President shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services

(2) The President shall not be a candidate for election as a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly, and, if a member of

Maylis-e-Shoora (Parliament) or a Provincial Assembly is elected as President, his seat in Maylis-e-Shoora (Parliament) or, as the case may be, the Provincial Assembly shall become vacant on the day he enters upon his office

44. (1) Subject to the Constitution, the President shall hold office for a term of five years from the day he enters upon his office

Provided that the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

(2) Subject to the Constitution, a person holding office as President shall be eligible for re-election to that office, but no person shall hold that office for more than two consecutive terms

(3) The President may, by writing under his hand addressed to the Speaker of the National Assembly, resign his office

45 The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority

46. It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation,

(b) to furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for, and

(c) if the President so requires, to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet

47 (1) Notwithstanding anything contained in the Constitution, the President may, in accordance with the provisions of this Article, be removed from office on the ground of physical or mental incapacity or impeached on a charge of violating the Constitution or gross misconduct

(2) Not less than one-half of the total membership of either House may give to the Speaker of the National Assembly or, as the case may be, the Chairman written notice of its intention to move a resolution for the removal of, or, as the case may be, to impeach, the President, and such notice shall set out the particulars of his incapacity or of the charge against him

(3) If a notice under clause (2) is received by the Chairman, he shall transmit it forthwith to the Speaker

(4) The Speaker shall, within three days of the receipt of a notice under clause (2) or clause (3), cause a copy of the notice to be transmitted to the President

(5) The Speaker shall summon the two Houses to meet in a joint sitting not earlier than seven days and not later than fourteen days after the receipt of the notice by him

(6) The joint sitting may investigate or cause to be investigated the grounds of the charge upon which the notice is founded

(7) The President shall have the right to appear and be represented during the investigation, if any, and before the joint sitting

(8) If, after consideration of the result of the investigation, if any, a resolution is passed at the joint sitting by the votes of not less than two-thirds of the total membership of Majlis-e-Shoora (Parliament) declaring that the President is unfit to hold the office due to incapacity or is guilty of violating the Constitution or of gross misconduct, the President shall cease to hold office immediately on the passing of the resolution

48. (1) In the exercise of his functions, the President shall act in accordance with the advice of the Cabinet or the Prime Minister

Provided that the President may require the Cabinet or as the case may be, the Prime Minister to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration

(2) Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever

(3) {Omitted}

(4) The question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any court, tribunal or other authority

(5) Where the President dissolves the National Assembly, he shall, in his discretion—

(a) appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to the Assembly, and

(b) appoint a care-taker Cabinet

(6) If, at any time, the President, in his discretion, or on the advice of the Prime Minister, considers that it is desirable that any matter of national importance should be referred to a referendum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by "Yes" or "No"

(7) An act of Majlis-e-Shoora (Parliament) may lay down the procedure for the holding of a referendum and the compiling and consolidation of the result of a referendum.

49. (1) If the office of President becomes vacant by reason of death, resignation or removal of the President the Chairman or, if he is unable to perform the functions of the office of President, the Speaker of the National Assembly shall act as President until a President is elected in accordance with clause (3) of Article 41

(2) When the President, by reason of absence from Pakistan or any other cause, is unable to perform his functions, the Chairman or, if he too is absent or unable to perform the functions of the office of President, the Speaker of

c. National Assembly shall perform the functions of President until the President returns to Pakistan or, as the case may be, resumes his functions

## CHAPTER 2

### THE MAJLIS-E-SHOORA (PARLIAMENT)

Composition, Duration and Meetings of Majlis-e-Shoora (Parliament)

50. There shall be a Majlis-e-Shoora (Parliament) of Pakistan consisting of the President and two Houses to be known respectively as the National Assembly and the Senate

51. (1) The National Assembly shall consist of two hundred and seven Muslim members to be elected by direct and free vote in accordance with law

(2) A person shall be entitled to vote if—

(a) he is a citizen of Pakistan,

(b) he is not less than twenty-one years of age,

(c) his name appears on the electoral roll, and

(d) he is not declared by a competent court to be of unsound mind

(2A) In addition to the number of seats referred to in clause (1), there shall be in the National Assembly ten additional seats reserved as follows for the person referred to in clause (3) of Article 106

Christians

Hindus and persons belonging to the Scheduled castes

Sikh, Buddhist and Parsi communities and other non-Muslims

Persons belonging to the Qadiani group or the Lahori group (who call themselves Ahmadis)

(3) The seats in the National Assembly shall be allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital on the basis of population in accordance with the last preceding census officially published

(4) Until the expiration of a period of ten years from the commencing day or the holding of the third general election to the National Assembly, whichever occurs later, twenty seats in addition to the number of seats referred to in clause (1) shall be reserved for women and allocated to the Provinces in accordance with the Constitution and law

(14) The members to fill the seats referred to in clause (2A) shall be elected, simultaneously with the members to fill the seats referred to in clause (1) on the basis of separate electorates by direct and free vote in accordance with law

(5) As soon as practicable after the general election to the National Assembly the members to fill seats reserved for women which are allocated to a Province under clause (4) shall be elected in accordance with law on the basis of the system of proportional representation by means of a single transferable vote by the electoral college consisting of the persons elected to the Assembly from that Province.

(6) Notwithstanding anything contained in this Article, the President may, by order, make such provision as to the manner of filling the seats in the National Assembly allocated to the Federally Administered Tribal Areas as he may think fit

52. The National Assembly shall, unless sooner dissolved, continue for a term of five years from the day of its first meeting and shall stand dissolved at the expiration of its term

53. (1) After a general election, the National Assembly shall, at its first meeting and to the exclusion of any other business, elect from amongst its members a Speaker and a Deputy Speaker and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall elect another member as Speaker or, as the case may be, Deputy Speaker

(2) Before entering upon office, a member elected as Speaker or Deputy Speaker shall make before the National Assembly oath in the form set out in the Third Schedule

(3) When the office of Speaker is vacant, or the Speaker is absent or is unable to perform his functions due to any cause, the Deputy Speaker shall act as Speaker, and if, at that time, the Deputy Speaker is also absent or is unable to act as Speaker due to any cause, such member as may be determined by the rules of procedure of the Assembly shall preside at the meeting of the Assembly

(4) The Speaker or the Deputy Speaker shall not preside at a meeting of the Assembly when a resolution for his removal from office is being considered

(5) The Speaker may, by writing under his hand addressed to the President, resign his office

(6) The Deputy Speaker may, by writing under his hand addressed to the Speaker, resign his office

(7) The office of Speaker or Deputy Speaker shall become vacant if—

(a) he resigns his office,

(b) he ceases to be a member of the Assembly,

(c) he is removed from office by a resolution of the Assembly, of which not less than seven days' notice has been given and which is passed by the votes of the majority of the total membership of the Assembly

(8) When the National Assembly is dissolved the Speaker shall continue in his office till the person elected to fill the office by the next Assembly enters upon his office

54. (1) The President may, from time to time, summon either House or both Houses of Majlis-e-Shoora (Parliament) in joint sitting to meet at such time and place as he thinks fit and may also prorogue the same

(2) There shall be at least three sessions of the National Assembly every year, and not more than one hundred and twenty days shall intervene between the last sitting of the Assembly in one session and the date appointed for its first sitting in the next session

Provided that the National Assembly shall meet for not less than one hundred and thirty working days in each year

*Explanation*—In this clause, "working days" includes any day on which there is a joint sitting and any period, not exceeding two days for which the National Assembly is adjourned

(3) On a requisition signed by not less than one-fourth of the total membership of the National Assembly, the Speaker shall summon the National Assembly to meet, at such time and place as he thinks fit, within fourteen days of the receipt of the requisition, and when the Speaker has summoned the Assembly only he may prorogue it

55. (1) Subject to the Constitution, all decisions of the National Assembly shall be taken by majority of the members present and voting, but the person presiding shall not vote except in the case of equality of votes

(2) If at any time during a sitting of the National Assembly the attention of the person presiding is drawn to the fact that less than one-fourth of the total membership of the Assembly is present, he shall either adjourn the Assembly or suspend the meeting until at least one-fourth of such membership is present

56. (1) The President may address either House or both Houses assembled together and may for that purpose require the attendance of the members

(2) The President may send messages to either House, whether with respect to a Bill then pending in the Majlis-e-Shoora (Parliament) or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration

(3) At the commencement of the first session after each general election to the National Assembly and at the commencement of the first session of each year the President shall address both Houses assembled together and inform the Majlis-e-Shoora (Parliament) of the causes of its summons

(4) Provision shall be made in the rules for regulating the procedure of a House and the conduct of its business for the allotment of time for discussion of the matters referred to in the address of the President

57. The Prime Minister, a Federal Minister, a Minister of State and the Attorney General shall have the right to speak and otherwise take part in the proceedings of either House, or a joint sitting or any committee thereof, of which he may be named a member, but shall not by virtue of this Article be entitled to vote

58. (1) The President shall dissolve the National Assembly if so advised by the Prime Minister, and the National Assembly shall, unless sooner dissolved stand dissolved at the expiration of forty-eight hours after the Prime Minister has so advised

*Explanation*—Reference in this Article to "Prime Minister" shall not be construed to include reference to a Prime Minister against whom a notice of a resolution for a vote of no-confidence has been given in the National

Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the National Assembly

59. (1) The Senate shall consist of eighty-seven members, of whom—

(a) fourteen shall be elected by the members of each Provincial Assembly,

(b) eight shall be elected by the members from the Federally Administered Tribal Areas in the National Assembly,

(c) three shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe, and

(d) five shall be elected by the members of each Provincial Assembly to represent ulema, technocrats and other professionals

(2) Election to fill seats in the Senate allocated to each Province shall be held in accordance with the system of proportional representation by means of the single transferable vote

(3) The Senate shall not be subject to dissolution but the term of its members, who shall retire as follows, shall be six years

(a) of the members referred to in paragraph (a) of clause (1), seven shall retire after the expiration of the first three years and seven shall retire after the expiration of the next three years

(b) of the members referred to in paragraph (b) of the aforesaid clause, four shall retire after the expiration of the first three years and four shall retire after the expiration of the next three years,

(c) of the members referred to in paragraph (c) of the aforesaid clause, one shall retire after the expiration of the first three years and two shall retire after the expiration of the next three years; and

(d) of the members referred to in paragraph (d) of the aforesaid clause, two shall retire after the expiration of the first three years and three shall retire after the expiration of the next three years

Provided that the term of office of a person elected to fill a casual vacancy shall be the unexpired term of the member whose vacancy he has filled

60. (1) After the Senate has been duly constituted, it shall, at its first meeting and to the exclusion of any other business, elect from amongst its members a Chairman and a Deputy Chairman and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Senate shall elect another member as Chairman or, as the case may be, Deputy Chairman

(2) The term of office of the Chairman or Deputy Chairman shall be three years from the day on which he enters upon his office.

61. The provisions of clauses (2) to (7) of Article 53, clauses (2) and (3) of Article 54 and Article 55 shall apply to the Senate as they apply to the National Assembly and, in their application to the Senate, shall have effect as if references therein to the National Assembly, Speaker and Deputy Speaker were references, respectively, to the Senate, Chairman and Deputy Chairman

and as if, in the proviso to the said clause (2) of Article 54, for the words "one hundred and thirty" the word "ninety" were substituted.

*Provisions as to Members of Majlis-e-Shoora (Parliament)*

62. A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—

- (a) he is a citizen of Pakistan,
  - (b) he is, in the case of National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll for election to a Muslim seat or a non-Muslim seat as the case may be in that Assembly,
  - (c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership,
  - (d) he is of good character and is not commonly known as one who violates Islamic injunctions,
  - (e) he has adequate knowledge of Islamic teachings and practises obligatory duties prescribed by Islam as well as abstains from major sins,
  - (f) he is sagacious, righteous and non-profligate and honest and ameen,
  - (g) he has not been convicted for a crime involving moral turpitude or for giving false evidence,
  - (h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the Ideology of Pakistan
- Provided that the disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation, and
- (i) he possesses such other qualifications as may be prescribed by Act of Majlis-e-Shoora (Parliament)

63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if—

- (a) he is of unsound mind and has been so declared by a competent court, or
- (b) he is an undischarged insolvent, or
- (c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State, or
- (d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder, or
- (e) he is in the service of any statutory body of any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, or
- (f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified

under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir, or

(g) he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, or

(h) he has been, on conviction for any offence which in the opinion of the Chief Election Commissioner involves moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release, or

(i) he has been dismissed from the service of Pakistan on the ground of misconduct, unless a period of five years has elapsed since his dismissal, or

(j) he has been removed or compulsorily retired from the service of Pakistan on the ground of misconduct unless a period of three years has elapsed since his removal or compulsory retirement, or

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service, or

(l) he is found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect, or

(m) he has been convicted under section 7 of the Political Parties Act, 1962 (III of 1962), unless a period of five years has elapsed from the date of such conviction, or

(n) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government

Provided that the disqualification under this paragraph shall not apply to a person—

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him,

(ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a share-holder but is not a director holding an office of profit under the company, or

(iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in

the course of carrying on a separate business in which he has no share or interest, or

**Explanation**—In this Article "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply

(o) he holds any office of profit in the service of Pakistan other than the following offices, namely:—

(i) an office which is not whole time office remunerated either by salary or by fee,

(ii) the office of Lumbardar, whether called by this or any other title,

(iii) the Qaumi Razakars,

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force, or

(p) he is for the time being disqualified from being elected or chosen as a member of the *Majlis-e-Shoora* (Parliament) or of a Provincial Assembly under any law for the time being in force

(2) If any question arises whether a member of the *Majlis-e-Shoora* (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant

63A. (1) If a member of a political party defects, he may by means of a notice in writing addressed by him to the head of the political party or such other person as may be authorized in this behalf by the head of the Political party, be called upon to show cause, within not more than seven days of such a notice, as to why a declaration under clause (2) should not be made against him. If a notice is issued under this clause, the Presiding Officer of the concerned House shall be informed accordingly.

**Explanation**—A member of a House shall be deemed to defect from a political party if he, having been elected as such, as a candidate or nominee of a political party, or under a symbol of political party or having been elected otherwise than as a candidate or nominee of a political party, and having become a member of a political party after such election by means of a declaration in writing:—

(a) commits a breach of party discipline which means a violation of the party constitution, code of conduct and declared policies, or

(b) votes contrary to any direction issued by the Parliamentary Party to which he belongs, or

(c) abstain from voting in the House against party policy in relation to any bill

(2) Where action is proposed to be taken under the Explanation to clause (1), sub-clause (a) the disciplinary committee of the party on a reference by the Head of the Party, shall decide the matter, after giving an opportunity of a personal hearing to the member concerned within seven days. In the event the decision is against the member, he can file an appeal within seven days, before the head of the party, whose decision thereon shall be final, in cases covered by the Explanation to clause (1), sub-clauses (b) and (c), the declaration may be made by the head of the party concerned after examining the explanation of the member and determining whether or not that member has defected.

(3) The Presiding Officer of the House shall be intimated the decision by head of the political party in addition to intimation which shall also be concerned member. The Presiding Officer shall within two days transmit the decision to the Chief Election Commissioner. The Chief Election Commissioner, shall give effect to such decision, within seven days from the date of the receipt of such intimation by declaring the seat vacant and amend it under the schedule of the bye-election.

(4) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.

(5) For the purpose of this Article

(a) House means the National Assembly or the Senate in relation to and the Federation, and a Provincial Assembly in relation to the Province, as the case may be

(b) Presiding Officer means the Speaker of the National Assembly the Chairman of the Senate or the Speaker of the Provincial Assembly as case may be

(6) Notwithstanding anything contained in the Constitution no court including the Supreme Court and a High Court shall entertain any legal proceedings, exercise any jurisdiction or make any order in relation to the action under this Article

64. (1) A member of Majlis-e-Shoora (Parliament) may by writing under his hand addressed to the Speaker or, as the case may be the Chairman resign his seat, and thereupon his seat shall become vacant

(2) A House may declare the seat of a member vacant if, without leave of the House, he remains absent for forty consecutive days of its sittings

65. A person elected to a House shall not sit or vote until he has made before the House oath in the form set out in the Third Schedule

66. (1) Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora (Parliament), there shall be freedom of speech in Majlis-e-Shoora (Parliament) and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Majlis-e-Shoora (Parliament), and no person shall be so liable in respect of the publication by or under the authority of Majlis-e-Shoora (Parliament) of any report, paper, votes or proceedings

(2) In other respects, the powers, immunities and privileges of Majlis-e-Shoora, (Parliament), and the immunities and privileges of the members of Majlis-e-Shoora (Parliament), shall be such as may from time to time be defined by law and, until so defined, shall be such as were, immediately before the commencing day, enjoyed by the National Assembly of Pakistan and the committees thereof and its members

(3) Provision may be made by law for the punishment, by a House, of persons who refuse to give evidence or produce documents before a committee of the House when duly required by the chairman of the committee so to do

*Provided that any such law—*

(a) may empower a court to punish a person who refuses to give evidence or produce documents, and

(b) shall have effect subject to such order for safeguarding confidential matters from disclosure as may be made by the President

(4) The provisions of this Article shall apply to persons who have the right to speak in, and otherwise to take part in the proceedings of, Majlis-e-Shoora (Parliament) as they apply to members

(5) In this Article, Majlis-e-Shoora (Parliament) means either House or a joint sitting, or a committee thereof

#### *Procedure Generally*

67. (1) Subject to the Constitution, a House may make rules for regulating its procedure and the conduct of its business, and shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the House shall not be invalid on the ground that some persons who were not entitled to do so sat, voted or otherwise took part in the proceedings

(2) Until rules are made under clause (1), the procedure and conduct of business in a House shall be regulated by the rules of procedure made by the President

68 No discussion shall take place in Majlis-e-Shoora (Parliament) with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties

69. (1) The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure

(2) No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers

(3) In this Article, Majlis-e-Shoora (Parliament) has the same meaning as in Article 66

*Legislative Procedure*

70. (1) A Bill with respect to any matter in the Federal Legislative List or in the Concurrent Legislative List may originate in either House and shall if it is passed by the House in which it originated, be transmitted to the other House, and, if the Bill is passed without amendment, by the other House also, it shall be presented to the President for assent

(2) if a Bill transmitted to a House under clause (1) is rejected or is not passed within ninety days of its receipt or is passed with amendment, the Bill at the request of the House in which it originated, shall be considered in a joint sitting

(3) If a request is made under clause (2), the President shall summon a joint sitting, and, if the Bill is passed in the joint sitting, with or without amendment, by the votes of the majority of the total membership of the two Houses, it shall be presented to the President for assent

(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" and "Concurrent Legislative List" mean respectively the Federal Legislative List and the Concurrent Legislative List in the Fourth Schedule

## 71. { .. }

72. (1) The President, after consultation with the Speaker of the National Assembly and the Chairman, may make rules as to the procedure with respect to the joint sittings of, and communications between, the two Houses

(2) At a joint sitting, the Speaker of the National Assembly or in his absence, such person as may be determined by the rules made under clause (1), shall preside

(3) The rules made under clause (1) shall be laid before a joint sitting and may be added to, varied, amended or replaced at a joint sitting

(4) Subject to the Constitution, all decisions at a joint sitting shall be taken by the votes of the majority of the members present and voting

73. (1) Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for assent

(2) For the purpose of this Chapter, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely —

(a) the imposition, abolition, remission, alteration or regulation of any tax,

(b) the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government,

(c) the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund,

(d) the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge,

(e) the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys,

(f) the audit of the accounts of the Federal Government or a Provincial Government, and

(g) any matter incidental to any of the matters specified in the preceding paragraphs

(3) A Bill shall not be deemed to be a Money Bill by reason only that it provides —

(a) for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a licence fee or a fee or charge for any service rendered, or

(b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(4) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the National Assembly thereon shall be final

(5) Every Money Bill presented to the President for assent shall bear a certificate under the hand of the Speaker of the National Assembly that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be called in question

74. A Money Bill or a Bill or amendment which if enacted and brought into operation would involve expenditure from the Federal Consolidated Fund or withdrawal from the Public Account of the Federation or affect the coinage or currency of Pakistan or the constitution or functions of the State Bank of Pakistan shall not be introduced or moved in Majlis-e-Shoora (Parliament) except by or with the consent of the Federal Government

75. (1) When a Bill is presented to the President for assent, the President shall, within thirty days,—

(a) assent to the Bill; or

(b) in the case of a Bill other than a Money Bill, return the Bill to the Majlis-e-Shoora (Parliament) with a message requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendment specified in the message be considered.

(2) When the President has returned a Bill to the Majlis-e-Shoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting and, if it is again passed, with or without amendment, by the Majlis-e-Shoora (Parliament), by the votes of the majority of the members of both Houses present and voting it shall be deemed for the purposes of the Constitution to have been passed by both Houses and shall be presented to the President and the President shall not withhold assent therefrom

(3) When the President has assented to a Bill it shall become law and be called an Act of Majlis-e-Shoora (Parliament)

(4) No act of Majlis-e-Shoora (Parliament), and no provision in any such Act, shall be invalid by reason only that some recommendation, previous sanction or consent required by the Constitution was not given if that Act was assented to in accordance with the Constitution

76. (1) A Bill pending in either House shall not lapse by reason of the prorogation of the House

(2) A Bill pending in the Senate which has not been passed by the National Assembly shall not lapse on the dissolution of the National Assembly

(3) A Bill pending in the National Assembly, or a Bill which having been passed by the National Assembly is pending in the Senate, shall lapse on the dissolution of the National Assembly

77. No tax shall be levied for the purposes of the Federation except by or under the authority of Act of Majlis-e-Shoora (Parliament)

#### *Financial Procedures*

78. (1) All revenues received by the Federal Government, all loans raised by that Government and all moneys received by it in repayment of any loan, shall form part of a consolidated fund, to be known as the Federal Consolidated Fund

(2) All other moneys—

(a) received by or on behalf of the Federal Government, or

(b) received by or deposited with the Supreme Court or any other court established under the authority of the Federation, shall be credited to the Public Account of the Federation

79. The custody of the Federal Consolidated Fund, the payment of moneys into that Fund, the withdrawal of moneys therefrom, the custody of other moneys received by or on behalf of the Federal Government, their payment into, and withdrawal from, the Public Account of the Federation, and all matters connected with or ancillary to the matters aforesaid shall be regulated by Act of Majlis-e-Shoora (Parliament) or, until provision in that behalf is so made, by rules made by the President

80. (1) The Federal Government shall, in respect of every financial year, cause to be laid before the National Assembly a statement of the estimated receipts and expenditure of the Federal Government for that year, in this Part referred to as the Annual Budget Statement

(2) The Annual Budget Statement shall show separately—

(a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Federal Consolidated Fund, and

(b) the sums required to meet other expenditure proposed to be made from the Federal Consolidated Fund, and shall distinguish expenditure on revenue account from other expenditure

81. The following expenditure shall be expenditure charged upon the Federal Consolidated Fund —

(a) the remuneration payable to the President and other expenditure relating to his office, and the remuneration payable to—

- (i) the Judges of the Supreme Court,
- (ii) the Chief Election Commissioner,
- (iii) the Chairman and the Deputy Chairman,
- (iv) the Speaker and the Deputy Speaker of the National Assembly,
- (v) the Auditor-General,

(b) the administrative expenses, including the remuneration payable to officers and servants of the Supreme Court, the department of the Auditor-General and the Office of the Chief Election Commissioner and of the Election Commission and the Secretariats of the Senate and the National Assembly,

(c) all debt charges for which the Federal Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Federal Consolidated Fund,

(d) any sums required to satisfy any judgment, decree or award against Pakistan by any court or tribunal, and

(e) any other sums declared by the Constitution or by Act of Majlis-e-Shoora (Parliament) to be so charged

82. (1) So much of the Annual Budget Statement as relates to expenditure charged upon the Federal Consolidated Fund may be discussed in, but shall not be submitted to the vote of, the National Assembly

(2) So much of the Annual Budget Statement as relates to other expenditure shall be submitted to the National Assembly in the form of demands for grants, and the Assembly shall have power to assent to, or to refuse to assent to, any demand, or to assent to any demand subject to a reduction of the amount specified therein

Provided that, for a period of ten years from the commencing day or the holding of the second general election to the National Assembly, whichever occurs later, a demand shall be deemed to have been assented to without any reduction of the amount specified therein, unless, by the votes of a majority of the total membership of the Assembly, it is refused or assented to subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the Federal Government

83. (1) The Prime Minister shall authenticate by his signature a schedule specifying—

(a) the grants made or deemed to have been made by the National Assembly under Article 82, and

(b) the several sums required to meet the expenditure charged upon the Federal Consolidated Fund but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the National Assembly

(2) The schedule so authenticated shall be laid before the National Assembly, but shall not be open to discussion or vote thereon

(3) Subject to the Constitution, no expenditure from the Federal Consolidated Fund shall be deemed to be duly authorised unless it is specified in the schedule so authenticated and such schedule is laid before the National Assembly as required by clause (2).

84. If in respect of any financial year it is found—

(a) that the amount authorized to be expended for a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the Annual Budget Statement for that year, or

(b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year, the Federal Government shall have power to authorize expenditure from the Federal Consolidated Fund, whether the expenditure is charged by the Constitution upon that Fund or not, and shall cause to be laid before the National Assembly a Supplementary Budget Statement or, as the case may be, an Excess Budget Statement, setting out the amount of that expenditure, and the provisions of Articles 80 to 83 shall apply to those statements as they apply to the Annual Budget Statement

85. Notwithstanding anything contained in the foregoing provisions relating to financial matters, the National Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year, not exceeding four months pending completion of the procedure prescribed in Article 82 for the voting of such grant and the authentication of the schedule of authorized expenditure in accordance with the provisions of Article 83 in relation to the expenditure

86. Notwithstanding anything contained in the foregoing provisions relating to financial matters, at any time when the National Assembly stands dissolved, the Federal Government may authorize expenditure from the Federal Consolidated Fund in respect of the estimated expenditure for a period not exceeding four months in any financial year, pending completion of the procedure prescribed in Article 82 for the voting of grants and the authentication of the schedule of authorized expenditure in accordance with the provisions of Article 83 in relation to the expenditure

87. (1) Each House shall have a separate Secretariat

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses

(2) *Majlis-e-Shoora (Parliament)* may by law regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of either House

(3) Until provision is made by Majlis-e-Shoora (Parliament) under clause (2), the Speaker or, as the case may be, the Chairman may, with the approval of the President, make rules regulating the recruitment and the conditions of service, of persons appointed to the secretarial staff of the National Assembly or the Senate

88. (1) The expenditure of the National Assembly and the Senate within authorised appropriations shall be controlled by the National Assembly or, as the case may be, the Senate acting on the advice of its Finance Committee

(2) The Finance Committee shall consist of the Speaker or, as the case may be, the Chairman, the Minister of Finance and such other members as may be elected thereto by the National Assembly or, as the case may be, the Senate

(3) The Finance Committee may make rules for regulating its procedure.

#### Ordinances

89. (1) The President may, except when the National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of Majlis-e-Shoora (Parliament) and shall be subject to like restrictions as the power of Majlis-e-Shoora (Parliament) to make law, but every such Ordinance—

(a) shall be laid—

(i) before the National Assembly if it contains provisions dealing with all or any of the matters specified in clause (2) of Article 73, and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution,

(ii) before both Houses if it does not contain provisions dealing with any of the matters referred to in sub-paragraph (i), and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution, and

(b) may be withdrawn at any time by the President

(3) Without prejudice to the provisions of clause (2), an Ordinance laid before the National Assembly shall be deemed to be a Bill introduced in the National Assembly

**CHAPTER 3****THE FEDERAL GOVERNMENT**

90. (1) The executive authority of the Federation shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution

(2) Nothing contained in clause (1) shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any Province or other authority, or

(b) prevent the Majlis-e-Shoora (Parliament) from conferring by law functions on authorities other than the President

91. (1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions

(2) The President shall in his discretion appoint from amongst the members of the National Assembly a Prime Minister who, in his opinion, is most likely to command the confidence of the majority of the members of the National Assembly

(2A) Notwithstanding anything contained in clause (2), after the twentieth day of March, one thousand nine hundred and ninety, the President shall invite the member of the National Assembly to be the Prime Minister who commands the confidence of the majority of the members of the National Assembly, as ascertained in a session of the Assembly summoned for the purpose in accordance with the provisions of the Constitution

(3) The person appointed under clause (2) or as the case may be, invited under clause (2A) shall, before entering upon the office, make before the President oath in the form set out in the Third Schedule and shall within a period of sixty days thereof obtain a vote of confidence from the National Assembly

(4) The Cabinet, together with the Ministers of State, shall be collectively responsible to the National Assembly

(5) The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly, in which case he shall summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly

(6) The Prime Minister may, by writing under his hand addressed to the President, resign his office

(7) A Minister who for any period of six consecutive months is not a member of the National Assembly shall, at the expiration of that period, cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly

Provided that nothing contained in this clause shall apply to a Minister who is a member of the Senate

(8) Nothing contained in this Article shall be construed as disqualifying the Prime Minister or any other Minister or a Minister of State for continuing in office during any period during which the National Assembly stands dissolved, or as preventing the appointment of any person as Prime Minister or other Minister or as Minister of State during any such period

92. (1) Subject to clauses (7) and (8) of Article 91, the President shall appoint Federal Ministers and Ministers of State from amongst the members of Majlis-e-Shoora (Parliament) on the advice of the Prime Minister

Provided that the number of Federal Ministers and Ministers of State who are members of the Senate shall not at any time exceed one-fourth of the number of Federal Ministers

(2) Before entering upon office, a Federal Minister or Minister of State shall make before the President oath in the form set out in the Third Schedule

(3) A Federal Minister or Minister of State may, by writing under his hand addressed to the President, resign his office or may be removed from office by the President on the advice of the Prime Minister

93. (1) The President may, on the advice of the Prime Minister, appoint not more than five Advisers, on such terms and conditions as he may determine

(2) The provisions of Article 57 shall also apply to an Adviser

94. The President may ask the Prime Minister to continue to hold office until his successor enters upon the office of Prime Minister

95. (1) A resolution for a vote of no-confidence moved by not less than twenty per centum of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly

(2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly

(3) A resolution referred to in clause (1) shall not be moved in the National Assembly while the National Assembly is considering demands for grants submitted to it in the Annual Budget Statement

(4) If the resolution referred to in clause (1) is passed by a majority of the total membership of the National Assembly, the Prime Minister shall cease to hold office

96. {Omitted}

96A. {Ceased to be force}

97. Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan-

Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws

98. On the recommendation of the Federal Government, *Majlis-e-Shoora* (Parliament) may by law confer functions upon officers or authorities subordinate to the Federal Government.

99. (1) All executive actions of the Federal Government shall be expressed to be taken in the name of the President

(2) The President shall by rules specify the manner in which orders and other instruments made and executed in his name shall be authenticated and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the President.

(3) The President shall also make rules for the allocation and transaction of the business of the Federal Government.

100. (1) The President shall appoint a person being a person qualified to be appointed a Judge of the Supreme Court, to be the Attorney-General for Pakistan.

(2) The Attorney-General shall hold office during the pleasure of the President.

(3) It shall be the duty of the Attorney-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character as may be referred or assigned to him by the Federal Government, and in the performance of his duties he shall have the right of audience in all courts and tribunals in Pakistan.

(4) The Attorney-General may, by writing under his hand addressed to the President, resign his office.

## **PART IV PROVINCES**

### **CHAPTER 1 THE GOVERNORS**

101. (1) There shall be a Governor for each Province who shall be appointed by the President in his discretion on the advice of the Prime Minister.

(2) A person shall not be appointed a Governor unless he is qualified to be elected as member of the National Assembly and is not less than thirty-five years of age.

(3) The Governor shall hold office during the pleasure of the President and shall be entitled to such salary, allowances and privileges as the President may determine

(4) The Governor may, by writing under his hand addressed to the President, resign his office

(5) The President may make such provision as he thinks fit for the discharge of the functions of a Governor in any contingency not provided for in this Part

102. Before entering upon office, the Governor shall make before the Chief Justice of the High Court oath in the form set out in the Third Schedule

103 (1) The Governor shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services

(2) The Governor shall not be a candidate for election as a member of *Majlis-e-Shoora* (Parliament) or a Provincial Assembly and, if a member of is appointed as Governor, his seat in or, as the case may be, the Provincial Assembly shall become vacant on the day he enters upon his office

104. When the Governor is absent from Pakistan or is unable to perform the functions of his office due to any cause, such other person as the President may direct shall act as Governor

105. (1) Subject to the Constitution, in the performance of his functions, the Governor shall act in accordance with the advice of the Cabinet, or the Chief Minister

Provided that the Governor may require the Cabinet or, as the case may be, the Chief Minister to reconsider such advice, whether generally or otherwise, and the Governor shall act in accordance with the advice tendered after such reconsideration

(2) The question whether any, and if so what, advice was tendered to the Governor by the Chief Minister or the Cabinet shall not be inquired into in, or by, any court, tribunal or other authority

(3) Where the Governor dissolves the Provincial Assembly, he shall appoint, in his discretion, but with the previous approval of the President, a care-taker Cabinet

(4) The powers conferred by the Article on the President shall be exercised by him in his discretion

(5) The provisions of clause (2) of Article 48 shall have effect in relation to a Governor as if reference therein to "President" were reference to "Governor"

## CHAPTER 2

### PROVINCIAL ASSEMBLIES

106. (1) There shall be a Provincial Assembly for each Province consisting of the number of members hereinafter specified to be elected by direct and free vote in accordance with law

Baluchistan	40
The North-West Frontier Province	80
The Punjab	240
Sind	100

(2) A person shall be entitled to vote if—

(a) he is a citizen of Pakistan;

(b) he is not less than twenty-one years of age,

(c) his name appears on the electoral roll for any area in the Province,  
and

(d) he is not declared by a competent court to be of unsound mind

(3) In addition to the seats in the Provincial Assemblies for the Provinces of Baluchistan, the Punjab, the North-West Frontier and Sind specified in clause (1), there shall be in those assemblies the number of seats hereinafter specified for non-Muslims

Province	Christians, Hindus and persons belonging to the Scheduled Castes	Sikh Buddhist and Parsi communities and other non-Muslims	Persons belonging to the Qadiani group or the Lahori group (who call them- selves Ahmadis)
(1)	(2)	(3)	(4)
Baluchistan	1	1	—
The North-West Frontier Province	1	1	1
The Punjab	5	1	1
Sind	2	1	1

*Explanation*—Where no independent seat is allocated to a minority in a Province for being very small in number, the seat allocated jointly to all other non-Muslims in that Province shall be deemed to include that minority

(4) Until the expiration of a period of ten years from the commencing day or the holding of the third general election to the Assembly of a Province, whichever occurs later, there shall be in the Assembly a number of additional seats reserved for women equal to five per centum of the number of members of that Assembly specified in clause (1)

(5) The members to fill the seats referred to in clause (3) shall be elected, simultaneously with the members to fill the seats referred to in clause (1), on the basis of separate electorates by direct and free vote in accordance with law

(6) As soon as practicable after the general election to a Provincial Assembly, the members to fill seats in that Assembly reserved for women shall be elected in accordance with law on the basis of a system of proportional representation by means of a single transferable vote by the electoral college consisting of the persons elected to that Assembly

107. A Provincial Assembly shall, unless sooner dissolved, continue for a term of five years from the day of its first meeting and shall *stand dissolved* at the expiration of its term

108 After a general election, a Provincial Assembly shall, at its first meeting and to the exclusion of any other business, elect from amongst its members a Speaker and a Deputy Speaker and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall elect another member as Speaker or, as the case may be, Deputy Speaker

109. The Governor may from time to time—

(a) summon the Provincial Assembly to meet at such time and place as he thinks fit, and

(b) prorogue the Provincial Assembly

110. The Governor may address the Provincial Assembly and may for that purpose require the attendance of the members

111. The Advocate-General shall have the right to speak and otherwise take part in the proceedings of the Provincial Assembly or any committee thereof of which he may be named a member, but shall not by virtue of this Article be entitled to vote.

112. (1) The Governor shall dissolve the Provincial Assembly if so advised by the Chief Minister, and the Provincial Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty-eight hours after the Chief Minister has so advised

*Explanation* —Reference in this Article to "Chief Minister" shall not be construed to include reference to a Chief Minister against whom notice or a resolution for a vote of no-confidence has been given in the Provincial Assembly but has not been voted upon or against whom a resolution for a vote of no-confidence has been passed or who is continuing in office by virtue of clause (2) of Article 134 or a Provincial Minister performing the functions of the Chief Minister under clause (1) or clause (3) of Article 135

(2) The Governor may also dissolve the Provincial Assembly in his discretion, but subject to the previous approval of the President, where, in his opinion —

(a) a vote of no-confidence having been passed against the Chief Minister no other member of the Provincial Assembly is likely to command the confidence of the majority of the members of the Provincial Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the Provincial Assembly summoned for the purpose, or

(b) *(omitted)*

113. The qualifications and disqualifications for membership of the National Assembly set out in Articles 62 and 63 shall also apply for membership of a Provincial Assembly as if reference therein to "National Assembly" were a reference to "Provincial Assembly".

114. No discussion shall take place in a Provincial Assembly with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties

115. (1) A Money Bill, or a Bill or amendment which if enacted and brought into operation would involve expenditure from the Provincial Consolidated Fund or withdrawal from the Public Account of the Province shall not be introduced or moved in the Provincial Assembly except by or with the consent of the Provincial Government

(2) For the purpose of this Article, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely —

(a) the imposition, abolition, remission, alteration or regulation of any tax,

(b) the borrowing of money, or the giving of any guarantee, by the Provincial Government or the amendment of the law relating to the financial obligations of that Government,

(c) the custody of the Provincial Consolidated Fund, the payment of moneys into, or issue of moneys from, that Fund,

(d) the imposition of a charge upon the Provincial Consolidated Fund, or the abolition or alteration of any such charge,

(e) the receipt of moneys on account of the Public Account of the Province, the custody or issue of such moneys, and

(f) any matter incidental to any of the matters specified in the preceding paragraphs

(3) A Bill shall not be deemed to be a Money Bill by reason only that it provides—

(a) for the imposition or alteration of any fine or other pecuniary penalty or for the demand or payment of a licence fee or a fee or charge for any service rendered, or

(b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes

(4) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Provincial Assembly thereon shall be final

(5) Every Money Bill presented to the Governor for assent shall bear a certificate under the hand of the Speaker of the Provincial Assembly that it is a Money Bill and such certificate shall be conclusive for all purposes and shall not be called in question.

116. (1) When a Bill has been passed by the Provincial Assembly, it shall be presented to the Governor for assent

(2) When a Bill is presented to the Governor for assent, the Governor shall, within thirty days,—

(a) assent to the Bill, or

(b) in the case of a Bill other than a Money Bill, return the Bill to the Provincial Assembly with a message requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendment specified in the message be considered

(3) When the Governor has returned a Bill to the Provincial Assembly it shall be reconsidered by the Provincial Assembly and, if it is again passed, with or without amendment, by the Provincial Assembly, by the votes of the majority of the members of the Provincial Assembly present and voting, it shall be again presented to the Governor and the Governor shall not withhold assent therefrom

(4) When the Governor has assented to a Bill, it shall become law and be called an Act of Provincial Assembly

(5) No Act of a Provincial Assembly, and no provision in any such Act, shall be invalid by reason only that some recommendation, previous sanction or consent required by the Constitution was not given if that Act was assented to accordance with the Constitution

117 (1) A Bill pending in a Provincial Assembly shall not lapse by reason of the prorogation of the Assembly

(2) A Bill pending in a Provincial Assembly shall lapse on the dissolution of the Assembly

118. (1) All revenues received by the Provincial Government, all loans raised by that Government, and all moneys received by it in repayment of any loan, shall form part of a consolidated fund, to be known as the Provincial Consolidated Fund

(2) All other moneys—

(a) received by or on behalf of the Provincial Government, or

(b) received by or deposited with the High Court or any other court established under the authority of the Province,

shall be credited to the Public Account of the Province

119. The custody of the Provincial Consolidated Fund, the payment of moneys into that Fund, the withdrawal of moneys therefrom, the custody of other moneys received by or on behalf of the Provincial Government, their payment into, and withdrawal from, the Public Account of the Province, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by Act of the Provincial Assembly or, until provision in that behalf is made, by rules made by the Governor

120. (1) The Provincial Government shall, in respect of every financial year, cause to be laid before the Provincial Assembly a statement of the estimated receipts and expenditure of the Provincial Government for that year, in this Chapter referred to as the Annual Budget Statement

(2) The Annual Budget Statement shall show separately—

(a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Provincial Consolidated Fund, and

(b) the sums required to meet other expenditure proposed to be made from the Provincial Consolidated Fund, and shall distinguish expenditure on revenue account from other expenditure

121. The following expenditure shall be expenditure charged upon the Provincial Consolidated Fund.—

(a) the remuneration payable to the Governor and other expenditure relating to his office, and the remuneration payable to—

(i) the Judges of the High Court, and

(ii) the Speaker and Deputy Speaker of the Provincial Assembly,

(b) the administrative expenses, including the remuneration payable to officers and servants, of the High Court and the Secretariat of the Provincial Assembly,

(c) all debt charges for which the Provincial Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Provincial Consolidation Fund,

(d) any sums required to satisfy any judgment, decree or award against the Province by any court or tribunal, and

(e) any other sums declared by the Constitution or by Act of the Provincial Assembly to be so charged

122. (1) So much of the Annual Budget Statement as relates to expenditure charged upon the Provincial Consolidated Fund may be discussed in, but shall not be submitted to the vote of, the Provincial Assembly

(2) So much of the Annual Budget Statement as relates to other expenditure shall be submitted to the Provincial Assembly in the form of demands for grants, and that Assembly shall have power to assent to, or to refuse to assent to, any demand, or to assent to any demand subject to a reduction of the amount specified therein

Provided that, for a period of ten years from the commencing day or the holding of the second general election to the Provincial Assembly, whichever occurs later, a demand shall be deemed to have been assented to unless, by the votes of a majority of the total membership of the Assembly, it is refused or assented to subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the Provincial Government

123. (1) The Chief Minister shall authenticate by his signature a schedule specifying—

(a) the grants made or deemed to have been made by the Provincial Assembly under Article 122, and

(b) the several sums required to meet the expenditure charged upon the Provincial Consolidated Fund but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Assembly

(2) The schedule so authenticated shall be laid before the Provincial Assembly, but shall not be open to discussion or vote thereon

(3) Subject to the Constitution, no expenditure from the Provincial Consolidated Fund shall be deemed to be duly authorized unless it is specified in the schedule so authenticated and such schedule is laid before the Provincial Assembly as required by clause (2)

124. If in respect of any financial year it is found—

(a) that the amount authorized to be expended for a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the Annual Budget Statement for that year, or

(b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year,

the Provincial Government shall have power to authorize expenditure from the Provincial Consolidated Fund, whether the expenditure is charged by the Constitution upon that Fund or not, and shall cause to be laid before the Provincial Assembly a Supplementary Budget Statement or, as the case may be, an Excess Budget Statement, setting out the amount of that expenditure, and the provisions of Article 120 to 123 shall apply to those statements as they apply to the Annual Budget Statement

125. Notwithstanding anything contained in the foregoing provisions relating to financial matters, the Provincial Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year, not exceeding three months, pending completion of the procedure prescribed in Article 122 for the voting of such grant and the authentication of the schedule of expenditure in accordance with the provisions of Article 123 in relation to the expenditure

126. Notwithstanding anything contained in the foregoing provisions relating to financial matters, at any time when the Provincial Assembly stands dissolved, the Provincial Government may authorize expenditure from the Provincial Consolidated Fund in respect of the estimated expenditure for a period not exceeding four months in any financial year, pending completion of the procedure prescribed in Article 122 for the voting of grants and the authentication of the schedule of authorized expenditure in accordance with the provisions of Article 123 in relation to the expenditure.

127. Subject to the Constitution, the provisions of clauses (2) to (8) of Article 53, clauses (2) and (3) of Article 54, Article 55, Articles 63 to 67, Article 69, Article 77, Article 87 and Article 88 shall apply to and in relation to a Provincial Assembly or a committee or members thereof or the Provincial Government, but so that—

(a) any reference in those provisions to Majlis-e-Shoora (Parliament), a House or the National Assembly shall be read as a reference to the Provincial Assembly,

(b) any reference in those provisions to the President shall be read as a reference to the Governor of the Province.

(c) any reference in those provisions to the Federal Government shall be, read as a reference to the Provincial Government,

(d) any reference in those provisions to the Prime Minister shall be read as a reference to the Chief Minister,

(e) any reference in those provisions to a Federal Minister shall be read as a reference to a Provincial Minister,

(f) any reference in those provisions to the National Assembly of Pakistan shall be read as a reference to the Provincial Assembly in existence immediately before the commencing day, and

(g) the said clause (2) of Article 54 shall have effect as if, in the proviso thereto, for the words "one hundred and thirty" the word "seventy" were substituted.

128. (1) The Governor may, except when the Provincial Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Provincial Assembly and shall be subject to like restrictions as the power of the Provincial Assembly to make laws, but every such Ordinance—

(a) shall be laid before the Provincial Assembly and shall stand repealed at the expiration of three months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution, and

(b) may be withdrawn at any time by the Governor

(3) Without prejudice to the provisions of clause (2), an Ordinance laid before the Provincial Assembly shall be deemed to be a Bill introduced in the Provincial Assembly

### CHAPTER 3

#### THE PROVINCIAL GOVERNMENTS

129. The executive authority of the Province shall vest in the Governor and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution

130. (1) There shall be a Cabinet of Ministers, with the Chief Minister at its head, to aid and advise the Governor in the exercise of his functions

(2) The Governor shall appoint from amongst the members of the Provincial Assembly a Chief Minister who, in his opinion, is likely to command the confidence of the majority of the members of the provincial Assembly

(2A) Notwithstanding anything contained in clause (2) after the twentieth day of March, one thousand nine-hundred and eighty-eight, the Governor shall invite the member of the Provincial Assembly to be the Chief Minister who commands the confidence of the members of the Provincial

Assembly, as ascertained in session of the Assembly summoned for the purpose in accordance with the provisions of the Constitution

Provided that nothing contained in this clause shall apply to a Chief Minister holding office on the twentieth day of March, one thousand nine hundred and eighty eight, in accordance with provisions of the Constitution

(3) The person appointed under clause (2) or as the case may be, invited under clause (2A) shall, before entering upon the office, make before the Governor oath in the form set out in the Third Schedule and shall within a period of sixty days thereof obtain a vote of confidence from the Provincial Assembly

(4) The Cabinet shall be collectively responsible to the Provincial Assembly

(5) The Chief Minister shall hold office during the pleasure of the Governor, but the Governor shall not exercise his powers under this clause unless he is satisfied that the Chief Minister does not command the confidence of the majority of the members of the Provincial Assembly and require the Chief Minister to obtain a vote of confidence from the Assembly

(6) The Chief Minister may, by writing under his hand addressed to the Governor, resign his office

(7) A Minister who for any period of six consecutive months is not a member of the Provincial Assembly shall, at the expiration of that period, cease to be Minister, and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly

(8) Nothing contained in this Article shall be construed as disqualifying the Chief Minister or any other Minister for continuing in office during any period during which the Provincial Assembly stands dissolved, or as preventing the appointment of any person as Chief Minister or other Minister during any such period

131. It shall be the duty of the Chief Minister—

(a) to communicate to the Governor all decisions of the Cabinet relating to the administration of the affairs of the Province and proposals for legislation,

(b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for, and

(c) if the Governor so requires, to submit for consideration of the Cabinet any matter on which a decision has been taken by the Chief Minister or a Minister but which has not been considered by the Cabinet

132 (1) Subject to clauses (7) and (8) of Article 130, the Governor shall appoint Provincial Ministers from amongst members of the Provincial Assembly on the advice of the Chief Minister

(2) Before entering upon office, a Provincial Minister shall make before the Governor oath in the form set out in the Third Schedule

(3) A Provincial Minister may, by writing under his hand addressed to the Governor, resign his office or may be removed from office by the Governor on the advice of the Chief Minister.

133. The Governor may ask the Chief Minister to continue to hold office until his successor enters upon the office of Chief Minister

134. {Omitted}

135. {Omitted}

136. (1) A resolution for a vote of no-confidence moved by not less than twenty per centum of the total membership of the Provincial Assembly may be passed against the Chief Minister by the Provincial Assembly

(2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the Provincial Assembly

(3) If the resolution referred to in clause (1) is passed by a majority of the total membership of the Provincial Assembly, the Chief Minister shall cease to hold office

137. Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws:

Provided that, in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof

138. On the recommendation of the Provincial Government, the Provincial Assembly may by law confer functions upon officers or authorities subordinate to the Provincial Government

139. (1) All executive actions of the Provincial Government shall be expressed to be taken in the name of the Governor.

(2) The Governor shall by rules specify the manner in which orders and other instruments made and executed in his name shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the Governor.

(3) The Governor shall also make rules for the allocation and transaction of the business of the Provincial Government

140. (1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of the High Court, to be the Advocate-General for the Province

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Provincial government

(3) The Advocate-General shall hold office during the pleasure of the Governor

(4) The Advocate-General may, by writing under his hand addressed to the Governor, resign his office

## PART V

### RELATIONS BETWEEN FEDERATION AND PROVINCES

#### CHAPTER 1

#### DISTRIBUTION OF LEGISLATIVE POWERS

141. Subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof

142. Subject to the Constitution—

(a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List,

(b) Majlis-e-Shoora (Parliament), and a Provincial Assembly also, shall have power to make laws with respect to any matter in the Concurrent Legislative List,

(c) A Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List, and

(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to matters not enumerated in either of the Lists for such areas in the Federation as are not included in any Province

143. { . }

144. { . }

#### CHAPTER 2

#### ADMINISTRATIVE RELATIONS BETWEEN FEDERATION AND PROVINCES

145. (1) The President may direct the Governor of any Province to discharge as his Agent, either generally or in any particular matter, such functions relating to such areas in the Federation which are not included in any Province as may be specified in the direction

(2) The provisions of Article 105 shall not apply to the discharge by the Governor of his functions under clause (1)

146. (1) Notwithstanding anything contained in the Constitution, the Federal Government may, with the consent of the Government of a Province, entrust either conditionally or unconditionally to that Government, or to its officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of Majlis-e-Shoora (Parliament) may, notwithstanding that it relates to a matter with respect to which a Provincial Assembly has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) Where by virtue of this Article powers and duties have been conferred or imposed upon a Province or officers or authorities thereof, there shall be paid by the Federation to the Province such sum as may be agreed or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of Pakistan, in respect of any extra costs of administration incurred by the Province in connection with the exercise of those powers or the discharge of those duties.

147. Notwithstanding anything contained in the Constitution, the Government of a Province may, with the consent of the Federal Government, entrust, either conditionally or unconditionally, to the Federal Government, or to its officers, functions in relation to any matter to which the executive authority of the Province extends.

148. (1) The executive authority of every Province shall be so exercised as to secure compliance with Federal laws which apply in that Province.

(2) Without prejudice to any other provision of this Chapter, in the exercise of the executive authority of the Federation in any Province regard shall be had to the interests of that Province.

(3) It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution.

149. (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution thereof of any Federal law which relates to a matter specified in the Concurrent Legislative List and authorises the giving of such directions.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of national or strategic importance.

(4) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the manner in which the executive

authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility or economic life of Pakistan or any part thereof

150. Full faith and credit shall be given throughout Pakistan to public acts and records, and judicial proceedings of every Province

151. (1) Subject to clause (2), trade, commerce and intercourse throughout Pakistan shall be free

(2) Majlis-e-Shoora (Parliament) may by law impose such restrictions on the freedom of trade, commerce or intercourse between one Province and another or within any part of Pakistan as may be required in the public interest

(3) A Provincial Assembly or a Provincial Government shall not have power to—

(a) make any law, or take any executive action, prohibiting or restricting the entry into, or the export from, the Province of goods of any class or description, or

(b) impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan

(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the Province of an essential commodity shall not, if it was made with the consent of the President, be invalid

152. The Federation may, if it deems necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which Majlis-e-Shoora (Parliament) has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of Pakistan

## PART V

### RELATIONS BETWEEN FEDERATION AND PROVINCES

#### CHAPTER

#### SPECIAL PROVISIONS

152A (Omitted)

153 (1) There shall be a Council of Common Interests, in this Chapter referred to as the Council to be appointed by the President

(2) The members of the Council shall be—

(a) the Chief Ministers of the Provinces, and

(b) an equal number of members from the Federal Government to be nominated by the Prime Minister from time to time

(3) The Prime Minister, if he is a member of the Council, shall be the Chairman of the Council but, if at any time he is not a member, the President may nominate a Federal Minister who is a member of the Council to be its Chairman

(4) The Council shall be responsible to Majlis-e-Shoora (Parliament)

154. (1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and, in so far as it is in relation to the affairs of the Federation, the matter in entry 34 (electricity) in the Concurrent Legislative List, and shall exercise supervision and control over related institutions

(2) The decisions of the Council shall be expressed in terms of the opinion of the majority

(3) Until Majlis-e-Shoora (Parliament) makes provision by law in this behalf, the Council may make its rules of procedure

(4) Majlis-e-Shoora (Parliament) in joint sitting may from time to time by resolution issue directions through the Federal Government to the Council generally or in a particular matter to take action as Majlis-e-Shoora (Parliament) may deem just and proper and such directions shall be binding on the Council.

(5) If the Federal Government or a Provincial Government is dissatisfied with a decision of the council, it may refer the matter to Majlis-e-Shoora (Parliament) in a joint sitting whose decision in this behalf shall be final

155. (1) If the interests of a Province, the Federal Capital or the Federally Administered Tribal Areas, or any of the inhabitants thereof, in water from any natural source of supply have been or are likely to be affected prejudicially by—

(a) any executive act or legislation taken or passed or proposed to be taken or passed, or

(b) the failure of any authority to exercise any of its powers with respect to the use and distribution or control of water from that source the Federal Government or the Provincial Government concerned may make a complaint in writing to the Council

(2) Upon receiving such complaint, the Council shall, after having considered the matter, either give its decision or request the President to appoint a commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he may think fit, hereinafter referred to as the Commission

(3) Until Majlis-e-Shoora (Parliament) makes provision by law in this behalf, the provisions of the Pakistan Commissions of Inquiry Act, 1956, as in force immediately before the commencing day shall apply to the Council or

the Commission as if the Council or the Commission were a Commission appointed under that Act to which all the provisions of section 5 thereof applied and upon which the power contemplated by section 10A thereof had been conferred

(4) After considering the report and supplementary report, if any, of the Commission, the Council shall record its decision on all matters referred to the Commission

(5) Notwithstanding any law to the contrary, but subject to the provisions of clause (5) of Article 154, it shall be the duty of the Federal Government and the Provincial Government concerned in the matter in issue to give effect to the decision of the Council faithfully according to its terms and tenor

(6) No proceeding shall lie before any court at the instance of any party to a matter which is or has been in issue before the Council, or of any person whatsoever, in respect of a matter which is actually or has been or might or ought to have been a proper subject of complaint to the Council under this Article

156. (1) The President shall constitute a National Economic Council consisting of the Prime Minister, who shall be its Chairman, and such other members as the President may determine

Provided that the President shall nominate one member from each Province on the recommendation of the Government of that Province

(2) The National Economic Council shall review the overall economic condition of the country and shall, for advising the Federal Government and the Provincial Governments, formulate plans in respect of financial, commercial, social and economic policies, and in formulating such plans, it shall be guided by the Principles of Policy set out in Chapter 2 of Part II

157. (1) The Federal Government may in any Province construct or cause to be constructed hydro-electric or thermal power installations or grid stations for the generation of electricity and lay or cause to be laid inter-Provincial transmission lines

(2) The Government of a Province may—

(a) to the extent electricity is supplied to that Province from the national grid, require supply to be made in bulk for transmission and distribution within the Province,

(b) levy tax on consumption of electricity within the Province,

(c) construct power houses and grid stations and lay transmission lines for use within the Province, and

(d) determine the tariff for distribution of electricity within the Province

158 The Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from the well head, subject to the commitments and obligations as on the commencing day

159. (1) The Federal Government shall not unreasonably refuse to entrust to a Provincial Government such functions with respect to broadcasting and telecasting as may be necessary to enable that Government—

(a) to construct and use transmitters in the Province, and

(b) to regulate and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province

Provided that nothing in this clause shall be construed as requiring the Federal Government to entrust to any Provincial Government any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by person so authorised

(2) Any functions so entrusted to a Provincial Government shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything contained in the Constitution, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast or telecast by, or by authority of, the Provincial Government

(3) Any Federal law with respect to broadcasting and telecasting shall be such as to secure that effect can be given to the foregoing provisions of this Article

(4) If any question arises whether any conditions imposed on any Provincial Government are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by an arbitrator appointed by the Chief Justice of Pakistan

(5) Nothing in this article shall be construed as restricting the powers of the Federal Government under the Constitution for the prevention of any grave menace to the peace or tranquility of Pakistan or any part thereof

## **PART VI**

## **FINANCE, PROPERTY, CONTRACTS AND SUITS**

### **CHAPTER 1**

### **FINANCE**

#### *Distribution of Revenues between the Federation and the Provinces*

160. (1) Within six months of the commencing day and thereafter at intervals not exceeding five years, the President shall constitute a National Finance Commission consisting of the Minister of Finance of the Federal Government, the Ministers of Finance of the Provincial Governments, and such other persons as may be appointed by the President after consultation with the Governors of the Provinces

(2) It shall be the duty of the National Finance Commission to make recommendations to the President as to—

(a) the distribution between the Federation and the Provinces of the net proceeds of the taxes mentioned in clause (3),

(b) the making of grants-in-aid by the Federal Government to the Provincial Governments,

(c) the exercise by the Federal Government and the Provincial Governments of the borrowing powers conferred by the Constitution, and

(d) any other matter relating to finance referred to the Commission by the President

(3) The taxes referred to in paragraph (a) of clause (2) are the following taxes raised under the authority of *Majlis-e-Shoora* (Parliament), namely—

(i) taxes on income, including corporation tax, but not including taxes on income consisting of remuneration paid out of the Federal Consolidated Fund,

(ii) taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed,

(iii) export duties on cotton, and such other export duties as may be specified by the President;

(iv) such duties of excise as may be specified by the President, and

(v) such other taxes as may be specified by the President

(4) As soon as may be after receiving the recommendation, of the National Finance Commission, the President shall, by order, specify, in accordance with the recommendations of the Commission under paragraph (a) of clause (2), the share of the net proceeds of the taxes mentioned in clause (3) which is to be allocated to each Province, and that share shall be paid to the Government of the Province concerned, and, notwithstanding the provision of Article 78 shall not form part of the Federal Consolidated Fund

(5) The recommendations of the National Finance Commission, together with an explanatory memorandum as to the action taken thereon, shall be laid before both Houses and the Provincial Assemblies

(6) At any time before an Order under clause (4) is made, the President may, by Order, make such amendments or modifications in the law relating to the distribution of revenues between the Federal Government and the Provincial Governments as he may deem necessary or expedient.

(7) The President may, by Order, make grants-in-aid of the revenues of the Provinces in need of assistance and such grants shall be charged upon the Federal Consolidated Fund

161. (1) Notwithstanding the provisions of Article 78 the net proceeds of the Federal duty of excise on natural gas levied at well-head and collected by the Federal Government and of the royalty collected by the Federal Government shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of natural gas is situated

(2) The net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the Province in which the hydro-electric station is situated

*Explanation*—For the purposes of this clause "net profits" shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydro-electric station at a rate to be determined by the Council of Common Interests, the operating expenses of the station, which shall include any sums payable as taxes, duties, interest or return on investment, and depreciations and element of obsolescence, and over-heads, and provision for reserves

162. No Bill or amendment which imposes or varies a tax or duty the whole or part of the net proceeds whereof is assigned to any Province, or which varies the meaning of the expression "agricultural income" as defined for the purpose of the enactments relating to income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to Provinces, shall be introduced or moved in the National Assembly except with the previous sanction of the President

163. A Provincial Assembly may by Act impose taxes, not exceeding such limits as may from time to time be fixed by Act of Majlis-e-Shoora (Parliament), on persons engaged in professions, trades, callings or employments, and no such Act of the Assembly shall be regarded as imposing a tax on income

#### *Miscellaneous Financial Provisions*

164. The Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which Majlis-e-Shoora (Parliament) or, as the case may be, a Provincial Assembly may make laws

165 (1) The Federal Government shall not, in respect of its property or income, be liable to taxation under any Act of Provincial Assembly and, subject to clause (2), a Provincial Government shall not, in respect of its property or income, be liable to taxation under Act of Majlis-e-Shoora (Parliament) or under Act of the Provincial Assembly of any other Province

(2) If a trade or business of any kind is carried on by or on behalf of the Government of a Province outside that Province, that Government may, in respect of any property used in connection with that trade or business or any income arising from that trade or business, be taxed under Act of Majlis-e-Shoora (Parliament) or under Act of the Provincial Assembly of the Province in which that trade or business is carried on

(3) Nothing in this Article shall prevent the imposition of fees for services rendered

165A. (1) For the removal of doubt, it is hereby declared that Majlis-e-Shoora (Parliament) has, and shall be deemed always to have had, the power to make a law to provide for the levy and recovery of a tax on the income of a

## Articles 166-167]

corporation, company or other body or institution established by or under a Federal law or a Provincial law or an existing law or a corporation, company or other body or institution owned or controlled, either directly or indirectly, by the Federal Government or a Provincial Government, regardless of the ultimate destination of such income

(2) All orders made, proceedings taken and acts done by any authority or person, which were made, taken or done, or purported to have been made, taken or done, before the commencement of the Constitution (Amendment) Order 1985, in exercise of the powers derived from any law referred to in clause (1), or in execution of any orders made by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court or tribunal, including the Supreme Court and a High Court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court, including the Supreme Court and a High Court, on any ground whatsoever

(3) Every judgment or order of any court or tribunal, including the Supreme Court and a High Court, which is repugnant to the provisions of clause (1) or clause (2) shall be, and shall be deemed always to have been, void and of no effect whatsoever

## CHAPTER 2

## BORROWING AND AUDIT

166. The executive authority of the Federation extends to borrowing upon the security of the Federal Consolidated Fund within such limits, if any, as may from time to time be fixed by Act of Majlis-e-Shoora (Parliament), and to the giving of guarantees within such limits, if any, as may be so fixed

167 (1) Subject to the provisions of this Article, the executive authority of a Province extends to borrowing upon the security of the Provincial Consolidated Fund within such limits, if any, as may from time to time be fixed by Act of the Provincial Assembly, and to the giving of guarantees within such limits, if any, as may be so fixed

(2) The Federal Government may, subject to such conditions, if any, as it may think fit to impose, make loans to, or so long as any limits fixed under Article 166 are not exceeded give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged upon the Federal Consolidated Fund

(4) A Province may not, without the consent of the Federal Government, raise any loan if there is still outstanding any part of a loan made to the Province by the Federal Government, or in respect of which guarantee has been given by the Federal Government, and consent under this clause may be granted subject to such conditions, if any, as the Federal Government may think fit to impose

*Audit and Accounts*

168. (1) There shall be an Auditor-General of Pakistan, who shall be appointed by the President

(2) Before entering upon office, the Auditor-General shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule

(3) The terms and conditions of service, including the term of office, of the Auditor-General shall be determined by Act of Majlis-e-Shoora (Parliament) and, until so determined, by order of the President

(4) A person who has held office as Auditor-General shall not be eligible for further appointment in the service of Pakistan before the expiration of two years after he has ceased to hold that office

(5) The Auditor-General shall not be removed from office except in the like manner and on the like grounds as a Judge of the Supreme Court

(6) At any time when the office of the Auditor-General is vacant or the Auditor-General is absent or is unable to perform the functions of his office due to any cause, such other person as the President may direct shall act as Auditor-General and perform the functions of that office

169. The Auditor-General shall, in relation to-

(a) the accounts of the Federation and of the Provinces, and

(b) the accounts of any authority or body established by the Federation or a Province,

perform such functions and exercise such powers as may be determined by or under Act of Majlis-e-Shoora (Parliament) and, until so determined, by order of the President

170. The accounts of the Federation and of the Provinces shall be kept in such form and in accordance with such principles and methods as the Auditor-General may, with the approval of the President, prescribe

171. The reports of the Auditor-General relating to the accounts of the Federation shall be submitted to the President, who shall cause them to be laid before the National Assembly and the reports of the Auditor-General relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Assembly

**CHAPTER 3****PROPERTY, CONTRACTS, LIABILITIES AND SUITS**

172. (1) Any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in the Federal Government

(2) All lands, minerals and other things of value within the continental shelf or underlying the ocean within the territorial waters of Pakistan shall vest in the Federal Government

173. (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant,

sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of, the Federal Government or, as the case may be, the Provincial Government, and to the making of contracts

(2) All property acquired for the purposes of the Federation or of a Province shall vest in the Federal Government or, as the case may be, in the Provincial Government

(3) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the President or Governor by such persons and in such manner as he may direct or authorize

(4) Neither the President, nor the Governor of a Province, shall be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Federation or, as the case may be, the Province, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof

(5) Transfer of land by the Federal Government or a Provincial Government shall be regulated by law

174. The Federation may sue or be sued by the name of Pakistan and a Province may sue or be sued by the name of the Province

## PART VII THE JUDICATURE

### CHAPTER 1 THE COURTS

175. (1) There shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law

(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law

(3) The Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day.

### CHAPTER 2 THE SUPREME COURT OF PAKISTAN

176 The Supreme Court shall consist of a Chief Justice to be known as the Chief Justice of Pakistan and so many other Judges as may be determined by the National Assembly (Majlis-e-Shura (Parliament)) or, until so determined as may be fixed by the President

177. (1) The Chief Justice of Pakistan shall be appointed by the President, and each of the other Judges shall be appointed by the President after consultation with the Chief Justice.

(2) A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan and—

(a) has for a period of or for periods aggregating, not less than five years been a judge of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) has for a period of, or for periods aggregating not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day)

178. Before entering upon office, the Chief Justice of Pakistan shall make before the President, and any other Judge of the Supreme Court shall make before the Chief Justice, oath in the form set out in the Third Schedule

179. (1) A Judge of the Supreme Court shall hold office until he attains the age of sixty-five years, unless he sooner resigns or is removed from office in accordance with the Constitution

180. At any time when—

(a) the office of Chief Justice of Pakistan is vacant, or

(b) the Chief Justice of Pakistan is absent or is unable to perform the functions of his office due to any other cause,  
the President shall appoint the most senior of the other Judges of the Supreme Court to act as Chief Justice of Pakistan

181. (1) At any time when—

(a) the office of a Judge of the Supreme Court is vacant, or

(b) a Judge of the Supreme Court is absent or is unable to perform the functions of his office due to any other cause,  
the President may, in the manner provided in clause (1) of Article 177, appoint a Judge of a High Court who is qualified for appointment as a Judge of the Supreme Court to act temporarily as a Judge of the Supreme Court.

*Explanation*—In this clause, 'Judge of a High Court' includes a person who has retired as a Judge of a High Court.

(2) An appointment under this Article shall continue in force until it is revoked by the President.

182. If at any time it is not possible for want of quorum of Judges of the Supreme Court to hold or continue any sitting of the Court, or for any other reason it is necessary to increase temporarily the number of Judges of the Supreme Court, the Chief Justice of Pakistan may, in writing,—

(a) with the approval of the President, request any person who has held the office of a Judge of that Court and since whose ceasing to hold that office three years have not elapsed; or

(b) with the approval of the President and with the consent of the Chief Justice of a High Court, require a Judge of that Court qualified for appointment as a Judge of the Supreme Court.

to attend sittings of the Supreme Court as an ad hoc Judge for such period as may be necessary and while so attending an ad hoc Judge shall have the same power and jurisdiction as a Judge of the Supreme Court

183. (1) The permanent seat of the Supreme Court shall, subject to clause (3), be at Islamabad

(2) The Supreme Court may from time to time sit in such other places as the Chief Justice of Pakistan, with the approval of the President, may appoint

(3) Until provision is made for establishing the Supreme Court at Islamabad, the seat of the Court shall be at such place as the President may appoint

184 (1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments

*Explanation*—In this clause, "Governments" means the Federal Government and the Provincial Governments

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article

185. (1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences

(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence of a High Court—

(a) if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life, or, on revision, has enhanced a sentence to a sentence as aforesaid, or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court, or

(d) if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of Majlis-e-Shoora (Parliament) and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below, or

(e) if the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value

and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below, or

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal

186. (1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration

(2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President

186A The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court

187. (1) Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final

188. The Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it

189. Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan

190. All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court

191. Subject to the Constitution and law, the Supreme Court may make rules regulating the practice and procedure of the Court

## CHAPTER 3

## THE HIGH COURTS

192 (1) A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President

(2) The Sind and Baluchistan High Court shall cease to function as a common High Court for the Provinces of Baluchistan and Sind

(3) The President shall, by order, establish a High Court for each of the Provinces of Baluchistan and Sind and may make such provision in the order for the principal seats of the two High Courts, transfer of the Judges of the common High Court, transfer of cases pending in the common High Court immediately before the establishment of two High Courts and, generally, for matters consequential or ancillary to the common High Court ceasing to function and the establishment of the two High Courts as he may deem fit

(4) The jurisdiction of a High Court may, by Act of Majlis-e-Shoora (Parliament), be extended to any area in Pakistan not forming part of a Province

193 (1) A Judge of a High Court shall be appointed by the President after consultation—

(a) with the Chief Justice of Pakistan,

(b) with the Governor concerned, and except where the appointment is that of Chief Justice, with the Chief Justice of the High Court

(2) A person shall not be appointed a Judge of a High Court unless he is a citizen of Pakistan, is not less than forty years of age, and—

(a) he has for a period of, or for periods aggregating, not less than ten years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day), or

(b) he is and has for a period of not less than ten years been, a member of a civil service prescribed by law for the purposes of this paragraph and has, for a period of not less than three years served as or exercised the functions of a District Judge in Pakistan, or

(c) he has for a period of not less than ten years, held a judicial office in Pakistan

*Explanation*—In computing the period during which a person has been an advocate of a High Court or held judicial office, there shall be included any period during which he has held judicial office after he became an advocate or as the case may be the period during which he has been an advocate after having held judicial office

(3) In this Article, "District Judge" means Judge of a principal civil court of original jurisdiction

194 Before entering upon office the Chief Justice of a High Court shall take before the Governor, and any other Judge of the Court shall make before the Chief Justice oath in the form set out in the Third Schedule.

195. (1) A Judge of a High Court shall hold office until he attains the age of sixty-two years, unless he sooner resigns or is removed from office in accordance with the Constitution

196. At any time when—

(a) the office of Chief Justice of a High Court is vacant, or

(b) the Chief Justice of a High Court is absent or is unable to perform the functions of his office due to any other cause, the President shall appoint one of the other Judges of the High Court, or may request one of the Judges of the Supreme Court, to act as Chief Justice

197. At any time when—

(a) the office of a Judge of a High Court is vacant, or

(b) a Judge of a High Court is absent or is unable to perform the functions of his office due to any other cause or

(c) for any reason it is necessary to increase the number of Judges of a High Court,

the President may, in the manner provided in clause (1) of Article 193 appoint a person qualified for appointment as a Judge of the High Court to be Additional Judge of the Court for such period as the President may determine, being a period not exceeding such period, if any, as may be prescribed by law

198. (1) Each High Court in existence immediately before the commencing day shall continue to have its principal seat at the place where it had such seat before that day.

(2) Each High Court and the Judges and divisional courts thereof shall sit at its principal seat and the seats of its Benches and may hold at any place within its territorial jurisdiction, circuit courts consisting of such of the Judges as may be nominated by the Chief Justice

(3) The Lahore High Court shall have a Bench each at Bahawalpur Multan and Rawalpindi, the High Court of Sind shall have a Bench at Sukkur; the Peshawar High Court shall have a Bench each at Abbottabad and Dera Ismail Khan and the High Court of Baluchistan shall have a Bench at Sibi

(4) Each of the High Courts may have Benches at such other places as the Governor may determine on the advice of the Cabinet and in consultation with the Chief Justice of the High Court

(5) A Bench referred in clause (3), or established under clause (4) shall consist of such of the Judges of the High Court as may be nominated by the Chief Justice from time to time for a period of not less than one year

(6) The Governor in consultation with the Chief Justice of the High Court shall make rules to provide the following matters, that is to say,—

(a) assigning the area in relation to which each Bench shall exercise jurisdiction vested in the High Court, and

(b) for all incidental, supplemental or consequential matters

199. (1) Subject to the Constitution, a High Court may if it is satisfied that no other adequate remedy is provided by law —

(a) on the application of any aggrieved party, make an order—

(i) directing a person performing within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do, or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect, or

(b) on the application of any person, make an order—

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner, or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office, or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged

(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.

(4) Where—

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or State property or of impeding the assessment or collection of public revenues, the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing is satisfied that the interim order—

(i) would not have such effect as aforesaid, or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction

(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier

(4B) Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded

(5) In this Article, unless the context otherwise requires,—

“person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a court or tribunal established under a law relating to the Armed Forces of Pakistan, and “prescribed law officer” means—

(a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and

(b) in any other case, the Advocate-General for the Province in which the application is made

200. (1) The President may transfer a Judge of a High Court from one High Court to another High Court, but no Judge shall be so transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts

Provided that such consent, or consultation with the Chief Justices of the High Courts, shall not be necessary if such transfer is for a period not exceeding two years at a time

*Explanation*—In this Article, “Judge” does not include a Chief Justice but includes a Judge for the time being acting as Chief Justice of a High Court other than a Judge of the Supreme Court acting as such in pursuance of a request made under paragraph (b) of Article 196

(2) Where a Judge is so transferred or is appointed to an office other than the principal seat of the High Court, he shall, during the period for which he serves as a Judge of the High Court to which he is transferred, or holds such other office, be entitled to such allowances and privileges, in addition to his salary, as the President may, by order, determine

(3) If at any time it is necessary for any reason to increase temporarily the number of Judges of a High Court, the Chief Justice of that Court may require a Judge of any other High Court to attend sittings of the former High Court for such period as may be necessary and, while so attending the sittings of the High Court, the Judge shall have the same power and jurisdiction as a Judge of that High Court

Provided that a Judge shall not be so required except with his consent and the approval of the President and after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he is a Judge

*Explanation*—In this Article, "High Court" includes a Bench of a High Court

(4) A Judge of a High Court who does not accept transfer to another High Court under clause (1) shall be deemed to have retired from his office and, on such retirement, shall be entitled to receive a pension calculated on the basis of the length of his service as Judge and total service, if any, in the service of Pakistan

201 Subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it

202 Subject to the Constitution and law, a High Court may make rules regulating the practice and procedure of the Court or of any court subordinate to it

203. Each High Court shall supervise and control all courts subordinate to it

### CHAPTER 3A

#### FEDERAL SHARIAT COURT

203A. The provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution

203B In this Chapter, unless there is anything repugnant in the subject or context—

(a) "Chief Justice" means, Chief Justice of the Court,

(b) "Court" means the Federal Shariat Court constituted in pursuance of Article 203C,

(bb) "Judge" means Judge of the Court,

(c) "Law" includes any custom or usage having the force of law but does not include the Constitution

203C (1) There shall be constituted for the purposes of this Chapter a Court to be called the Federal Shariat Court

(2) The Court shall consist of not more than eight Muslim Judges, including the Chief Justice, to be appointed by the President

(3) The Chief Justice shall be a person who is, or has been, or is about to be a Judge of the Supreme Court or who is or has been a Judge of a High Court

(3A) Of the Judges not more than four shall be persons each one of whom is, or has been, or is qualified to be, a Judge of a High Court and not more than three shall be ulema who are well-versed in Islamic law

(4) The Chief Justice and a Judge shall hold office for a period not exceeding three years, but may be appointed for such further term or terms as the President may determine

Provided that a Judge of a High Court shall not be appointed to be a Judge for a period exceeding two years except with his consent and, except where the Judge is, himself the Chief Justice, after consultation by the President with the Chief Justice of the High Court

(4A) The Chief Justice, if he is not a Judge of the Supreme Court, and a Judge who is not a Judge of a High Court, may, by writing under his hand addressed to the President, resign his office

(4B) The President may, at any time, by order in writing,—

(a) modify the term of appointment of a Judge,

(b) assign to a Judge any other office, and

(c) require a Judge to perform such other functions as the President may deem fit, and pass such other order as he may consider appropriate

*Explanation*—In this clause and clause (4C), "Judge" includes Chief Justice.

(4C) While he is performing the functions which he is required under clause (4B) to perform or holding any other office assigned to him under that clause, a Judge shall be entitled to the same salary, allowances and privileges as are admissible to the Chief Justice or, as the case may be, Judge of the Court

(5) A Judge of a High Court who does not accept appointment as a Judge shall be deemed to have retired from his office and, on such retirement, shall be entitled to receive a pension calculated on the basis of the length of his service as Judge and total service, if any, in the service of Pakistan

(6) The Principal seat of the Court shall be at Islamabad, but Court may from time to time sit in such other places in Pakistan as the Chief Justice may, with the approval of the President, appoint

(7) Before entering upon office, the Chief Justice and a Judge shall make before the President or a person nominated by him oath in the form set out in the Third Schedule

(8) At any time when the Chief Justice or a Judge is absent or is unable to perform the functions of his office the President shall appoint another person qualified for the purpose to act as Chief Justice or, as the case may be, Judge

(9) A Chief Justice who is not a Judge of the Supreme Court shall be entitled to the same salary, allowances and privileges as are admissible to a Judge of the Supreme Court and a Judge who is not a Judge of a High Court shall be entitled to the same salary, allowances and privileges as are admissible to a Judge of a High Court

203D. (1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam

(1A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated in either of those Lists, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision—

(a) the reasons for its holding that opinion, and

(b) the extent to which such law or provision is so repugnant, and specify the day on which the decision shall take effect

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam,—

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam, and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect

(3A) Notwithstanding anything contained in this Chapter, in respect of any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure, the Court shall, in case of law held by it to be repugnant to the injunctions of Islam, in consultation with persons having special knowledge of the subject, recommend to the Government specific measures and a reasonable time within which to take adequate steps and amend such law so as to bring it in conformity with the injunctions of Islam

Provided that the decisions of the Court shall not have retrospective effect and no right or claim shall be based thereon accordingly directly or indirectly

(3B) Notwithstanding anything contained in the Constitution including this Chapter or clause (3A) or anything done pursuant thereto or any law or any judgment of any court to the contrary, all existing laws relating to the levy and collection of taxes and fees or banking or insurance practice and procedure which are the subject matter of decision of the Court referred to in clause (3A), shall continue to remain in force until such time as appropriate laws are enacted by the legislature in substitution of such existing laws as a consequence of the final decision of the Court as stated in clause (3A) and until the said laws have been enforced

Provided that nothing contained in clauses (3A) and (3B) shall apply to assessments made orders passed, proceedings pending and amounts payable or recovered before the enforcement of the laws enacted in pursuance of clause (3A)

203DD. (1) The Court may call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of Hudood for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by, and as to the regularity of any proceedings of, such court and may when calling for such record direct that the execution of any sentence be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record

(2) In any case the record of which has been called for by the Court the Court may pass such order as it may deem fit and may enhance the sentence

Provided that nothing in this Article shall be deemed to authorize the Court to convert a finding of acquittal into one of conviction and no order under this Article shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence

(3) The Court shall have such other jurisdiction as may be conferred on it by or under any law

203E. (1) For the purposes of the performance of its functions the Court shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters namely —

(a) summoning and enforcing the attendance of any person and examining him on oath,

(b) requiring the discovery and production of any document,

(c) receiving evidence on affidavits and

(d) issuing commissions for the examination of witnesses or documents

(2) The Court shall have power to conduct its proceedings and regulate its procedure in all respects as it deems fit

(3) The Court shall have the power of a High Court to punish its own contempt

(4) A party to any proceedings before the Court under clause (1) of Article 203D may be represented by a legal practitioner who is a Muslim and has been enrolled as an advocate of a High Court for a period of not less than five years or as an advocate of the Supreme Court or by a jurisconsult selected by the party from out of a panel of jurisconsults maintained by the Court for the purpose

(5) For being eligible to have his name borne on the panel of jurisconsults referred to in clause (4), a person shall be an Aalim who in the opinion of the Court, is well-versed in Shariat

(6) A legal practitioner or jurisconsult representing a party before the Court shall not plead for the party but shall state, expound and interpret the Injunctions of Islam relevant to the proceedings so far as may be known to him and submit to the Court a written statement of his interpretation of such Injunctions of Islam

(7) The Court may invite any person in Pakistan or abroad whom the Court considers to be well-versed in Islamic law to appear before it and render such assistance as may be required of him

(8) No court-fee shall be payable in respect of any petition or application made to the Court under Article 203D

(9) The Court shall have power to review any decision given or order made by it

203F (1) Any party to any proceedings before the Court under Article 203D aggrieved by the final decision of the Court in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court

Provided that an appeal on behalf of the Federation or of a Province may be preferred within six months of such decision

(2) The provisions of clauses (2) and (3) of Article 203D and clauses (4) to (8) of Article 203E shall apply to and in relation to the Supreme Court as if reference in those provisions to Court were a reference to the Supreme Court

(2A) An appeal shall lie to the Supreme Court from any judgment, final order or sentence of the Federal Shariat Court,—

(a) if the Federal Shariat Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or imprisonment for life or imprisonment for a term exceeding fourteen years, or, on revision, has enhanced a sentence as aforesaid, or

(b) if the Federal Shariat Court has imposed any punishment on any person for contempt of the Court

(2B) An appeal to the Supreme Court from a judgment, decision, order or sentence of the Federal Shariat Court in a case to which the preceding clauses do not apply shall lie only if the Supreme Court grants leave to appeal

(3) For the purpose of the exercise of the jurisdiction conferred by this article there shall be constituted in the Supreme Court a Bench to be called the Appeal Bench and consisting of,—

(a) three Justices of the Supreme Court, and

(b) not more than two Ulema to be appointed by the President to attend sittings of the Bench as ad hoc members thereof from amongst the Judges of the Federal Shariat Court or from out of a panel of Ulema to be drawn up by the President in consultation with the Chief Justice

(4) A person appointed under paragraph (b) of clause (3) shall hold office for such period as the President may determine

(5) Reference in clauses (1) and (2) to Supreme Court shall be construed as a reference to the Shariat Appellate Bench

(6) While attending sittings of the Shariat Appellate Bench, a person appointed under paragraph (b) of clause (3) shall have the same power and jurisdiction, and be entitled to the same privileges, as a Judge of the Supreme Court and be paid such allowances as the President may determine

203G. Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceeding or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court

203GG. Subject to Article 203D and 203F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all courts subordinate to a High Court

203H. (1) Subject to clause (2) nothing in this Chapter shall be deemed to require any proceedings pending in any court or tribunal immediately before the commencement of this Chapter or initiated after such commencement, to be adjourned or stayed by reason only of a petition having been made to the Court for a decision as to whether or not a law or provision of law relevant to the decision of the point in issue in such proceedings is repugnant to the Injunctions of Islam, and all such proceedings shall continue, and the point in issue therein shall be decided, in accordance with the law for the time being in force

(2) All proceedings under clause (1) of Article 203B of the Constitution that may be pending before any High Court immediately before the commencement of this Chapter shall stand transferred to the Court and shall be dealt with by the Court from the stage from which they are so transferred

(3) Neither the Court nor the Supreme Court shall in the exercise of its jurisdiction under this Chapter have power to grant an injunction or make any interim order in relation to any proceedings pending in any other court or tribunal

203I. {Omitted}

203J. (1) The Court may, by notification in the official Gazette make rules for carrying out the purposes of this Chapter

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision in respect of all or any of the following matters, namely —

(a) the scale of payment of honorarium to be made to juriconsults, experts and witnesses summoned by the Court to defray the expenses, if

any, incurred by them in attending for the purposes of the proceedings before the Courts,

(b) the form of oath to be made by a jurisconsult, expert or witness appearing before the Court,

(c) the powers and functions of the Court being exercised or performed by Benches consisting of one or more members constituted by the Chief Justices,

(d) the decision of the Court being expressed in terms of the opinion of the majority of its members or, as the case may be, of the members constituting a Bench, and

(e) the decision of cases in which the members constituting a Bench are equally divided in their opinion

(3) Until rules are made under clause (1), the Shariat Benches of Superior Courts Rules, 1979, shall, with the necessary modifications and so far as they are not inconsistent with the provisions of this Chapter, continue in force

#### CHAPTER 4

#### GENERAL PROVISIONS RELATING TO THE JUDICATURE

204. (1) In this Article, "Court" means the Supreme Court or a High Court

(2) A Court shall have power to punish any person who,—

(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court,

(b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Court, or

(d) does any other thing which, by law, constitutes contempt of the Court

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court

205. The remuneration and other terms and conditions of service of a Judge of the Supreme Court or of a High Court shall be as provided in the Fifth Schedule

206. (1) A Judge of the Supreme Court or a High Court may resign his office by writing under his hand addressed to the President

(2) A Judge of a High Court who does not accept appointment as a Judge of the Supreme Court shall be deemed to have retired from his office and, on such retirement, shall be entitled to receive a pension calculated on the basis of the length of his service as Judge and total service if any, in the service of Pakistan

207. (1) A Judge of the Supreme Court or of a High Court shall not,—

(a) hold any other office of profit in the service of Pakistan if his remuneration is thereby increased, or

(b) occupy any other position carrying the right to remuneration for the rendering of services

(2) A person who has held office as a Judge of the Supreme Court or of a High Court shall not hold any office of profit in the service of Pakistan not being a judicial or quasi-judicial office or the office of Chief Election Commissioner or of Chairman or member of a law commission or of Chairman or member of the Council of Islamic Ideology, before the expiration of two years after he has ceased to hold that office

(3) A person who has held office as a permanent Judge —

(a) of the Supreme Court, shall not plead or act in any court or before any authority in Pakistan,

(b) of a High Court, shall not plead or act in any court or before any authority within its jurisdiction and

(c) of the High Court of West Pakistan as it existed immediately before the coming into force of the Province of West Pakistan (Dissolution) Order, 1970, shall not plead or act in any court or before any authority within the jurisdiction of the principal seat of that High Court or, as the case may be, the permanent Bench of that High Court to which he was assigned

208. The Supreme Court and the Federal Shariat Court with the approval of the President and a High Court, with the approval of the Governor concerned may make rules providing for the appointment by the Court of officers and servants of the Court and for their terms and conditions of employment

209. (1) There shall be a Supreme Judicial Council of Pakistan in this Chapter referred to as the Council

(2) The Council shall consist of,—

(a) the Chief Justice of Pakistan,

(b) the two next most senior Judges of the Supreme Court and

(c) the two most senior Chief Justices of High Courts

*Explanation*—For the purpose of this clause the inter se seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice otherwise than as acting Chief Justice, and in case the dates of such appointment are the same with reference to their dates of appointment as Judges of any of the High Courts

(3) If at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then—

(a) if such member is a Judge of the Supreme Court the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2) and

## Article 210-212]

(b) if such member is the Chief Justice of a High Court the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts, shall act as a member of the Council in his place

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority

(5) If, on information received from the Council or from any other source, the President is of the opinion that a Judge of the Supreme Court or of a High Court,—

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity, or

(b) may have been guilty of misconduct, the President shall direct the Council to inquire into the matter

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion,—

(a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and

(b) that he should be removed from office, the President may remove the Judge from office

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article

(8) The Council shall issue a code of conduct to be observed by Judges of the Supreme Court and of the High Courts

210 (1) For the purpose of inquiring into any matter, the Council shall have the same power as the Supreme Court has to issue directions or orders for securing the attendance of any person or the discovery or production of any document, and any such direction or order shall be enforceable as if it had been issued by the Supreme Court

(2) The provisions of Article 204 shall apply to the Council as they apply to the Supreme Court and a High Court

211 The proceedings before the Council, its report to the President and the removal of a Judge under clause (6) of Article 209 shall not be called in question in any court

212 (1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—

(a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters,

(b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or

other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant or

(c) matters relating to the acquisition administration and disposal of any property which is deemed to be enemy property under any law

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1) no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court, shall abate on such establishment

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution *Majlis-e-Shoora* (Parliament) by law extends the provisions to such a Court or Tribunal

(3) An appeal to the Supreme Court from a judgment, decree order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal

#### 212A. {Omitted}

212B. (1) In order to ensure speedy trial of cases of persons accused of the heinous offences specified by law as are referred to them by the Federal Government, or an authority or person authorized by it, in view of their being gruesome, brutal and sensational in character or shocking to public morality the Federal Government may by law constitute as many Special Courts as it may consider necessary

(2) Where the Federal Government constitutes more than one Special Court, it shall determine the territorial limits within which each one of them shall exercise jurisdiction

(3) A Special Court shall consist of a Judge being a person who is, or has been or is qualified for appointment as, a Judge of a High Court and is appointed by the Federal Government after consultation with the Chief Justice of the High Court

(4) A person other than a Judge of a High Court who is appointed as a Judge of a Special Court shall hold office for the period this Article remains in force and shall not be removed from office except in the manner prescribed in Article 209 for the removal from office of a Judge and in the application of the said Article for the purposes of this clause, any reference in that Article to a Judge shall be construed as a reference to a Judge of a Special Court

(5) The law referred to in clause (1) shall make provision for the constitution of as many Supreme Appellate Court as the Federal Government may consider necessary and an appeal against the sentence or final order of a

Special Court being preferred to a Supreme Appellate Court which shall consist of—

(a) a Chairman, being a Judge of the Supreme Court to be nominated by the Federal Government after consultation with the Chief Justice of Pakistan, and

(b) two Judges of the High Courts to be nominated by the Federal Government after consultation with the Chief Justice of the High Court concerned

(6) Where the Federal Government constitutes more than one Supreme Appellate Court, it shall determine the territorial limits within which each one of them shall exercise Jurisdiction

(7) A Special Court and a Supreme Appellate Court shall decide a case or, as the case may be, an appeal with thirty days

(8) Notwithstanding anything contained in the Constitution, no court shall exercise any jurisdiction whatsoever in relation to any proceedings before, or order or sentence passed by a Special Court or a Supreme Appellate Court constituted under a law referred to in clause (1), except as provided in such law

## **PART VIII ELECTIONS**

### **CHAPTER 1**

#### **CHIEF ELECTION COMMISSIONER AND ELECTION COMMISSIONS**

213. (1) There shall be a Chief Election Commissioner (in this Part referred to as the Commissioner), who shall be appointed by the President in his discretion

(2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court

(3) The Commissioner shall have such powers and functions as are conferred on him by the Constitution and law

214. Before entering upon office, the Commissioner shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule

215 (1) The Commissioner shall, subject to this Article, hold office for a term of three years from the day he enters upon his office

Provided that the National Assembly may by resolution extend the term of the Commissioner by a period not exceeding one year

(2) The Commissioner shall not be removed from office except in the manner prescribed in Article 209 for the removal from office of a Judge and, in

the application of the Article for the purposes of this clause, any reference in that Article to a Judge shall be construed as a reference to the Commissioner

(3) The Commissioner may by writing under his hand addressed to the President, resign his office

216. (1) The Commissioner shall not —

(a) hold any other office of profit in the service of Pakistan or

(b) occupy any other position carrying the right to remuneration for the rendering of services

(2) A person who has held office as Commissioner shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office

Provided that—

(a) this clause shall not be construed as preventing a person who was a Judge of the Supreme Court or of a High Court immediately before his appointment as Commissioner from resuming his duties as such Judge on the expiration of his term as Commissioner, and

(b) a person who has held office as Commissioner may, with the concurrence of both Houses, be reappointed to that office before the expiration of two years after he has ceased to hold that office

217. At any time when,—

(a) the office of Commissioner is vacant, or

(b) the Commissioner is absent or unable to perform the functions of his office due to any other cause,

a Judge of the Supreme Court nominated by the Chief Justice of Pakistan shall Act as Commissioner

218. (1) For the purpose of each general election to the National Assembly and to a Provincial Assembly, an Election Commission shall be constituted in accordance with this Article

(2) The Election Commission shall consist of,—

(a) the Commissioner who shall be Chairman of the Commission and

(b) two members each of whom shall be a Judge of a High Court appointed by the President after consultation with the Chief Justice of the High Court concerned and with the Commissioner

(3) It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against

219. The Commissioner shall be charged with the duty of —

(a) Preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually,

(b) organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly, and

## (c) appointing Election Tribunals

220. It shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions

221. Until *Majlis-e-Shoora* (Parliament) by law otherwise provides, the Commissioner may, with the approval of the President, make rules providing for the appointment by the Commissioner of officers and servants to be employed in connection with the functions of the Commissioner or an Election Commission and for their terms and conditions of employment

## CHAPTER 2

## ELECTORAL LAWS AND CONDUCT OF ELECTIONS

222. Subject to the Constitution, *Majlis-e-Shoora* (Parliament) may by law provide for—

(a) the allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51,

(b) the delimitation of constituencies by the Election Commission,

(c) the preparation of electoral rolls, the requirements as to residence in a constituency, the determination of objections pertaining to and the commencement of electoral rolls,

(d) the conduct of elections and election petitions, the decision of doubts and disputes arising in connection with elections,

(e) matters relating to corrupt practices and other offences in connection with elections, and

(f) all other matters necessary for the due constitution of the two Houses and the Provincial Assemblies,

but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or an Election Commission under this Part

223. (1) No person shall, at the same time, be a member of,—

(a) both Houses, or

(b) a House and a Provincial Assembly, or

(c) the Assemblies of two or more Provinces, or

(d) a House or a Provincial Assembly in respect of more than one seat

(2) Nothing in clause (1) shall prevent a person from being a candidate for two or more seats at the same time, whether in the same body or in different bodies, but if he is elected to more than one seat he shall, within a period of thirty days after the declaration of the result for the last such seat, resign all but one of his seats, and if he does not so resign, all the seats to which he has been elected shall become vacant at the expiration of the said period of thirty days except the seat to which he has been elected last or, if he has been elected to more than one seat on the same day, the seat for election to which his nomination was filed last

*Explanation* —In this clause, "body" means either House or a Provincial Assembly

(3) A person to whom clause (2) applies shall not take a seat in either House or the Provincial Assembly to which he has been elected until he has resigned all but one of his seats

(4) Subject to clause (2), if a member of either House or of a Provincial Assembly becomes a candidate for a second seat which, in accordance with clause (1), he may not hold concurrently with his first seat, then his first seat shall become vacant as soon as he is elected to the second seat

224. (1) A general election to the National Assembly or a Provincial Assembly shall be held within a period of sixty days immediately preceding the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the results of the election shall be declared not later than fourteen days before that day

(2) When the National Assembly or a Provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls

(3) An election to fill the seats in the Senate which are to become vacant on the expiration of the term of the members of the Senate shall be held not earlier than thirty days immediately preceding the day on which the vacancies are due to occur

(4) When, except by dissolution of the National Assembly or a Provincial Assembly, a seat in any such Assembly has become vacant not later than one hundred and twenty days before the term of that Assembly is due to expire, an election to fill the seat shall be held within sixty days from the occurrence of the vacancy

(5) When a seat in the Senate has become vacant, an election to fill the seat shall be held within thirty days from the occurrence of the vacancy

225. No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)

226. All elections under the Constitution shall be by secret ballot

## PART IX

### ISLAMIC PROVISIONS

227 (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions

*Explanation* —In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens

228 (1) There shall be constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council

(2) The Islamic Council shall consist of such members, being not less than eight and not more than twenty, as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan

(3) While appointing members of the Islamic Council the President shall ensure that—

(a) so far as practicable various schools of thought are represented in the Council,

(b) not less than two of the members are persons each of whom is, or has been, a Judge of the Supreme Court or of a High Court,

(c) not less than four of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction, and

(d) at least one member is a woman

(4) The President shall appoint one of the members of the Islamic Council to be the Chairman thereof

(5) Subject to clause (6) a member of the Islamic Council shall hold office for a period of three years

(6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the President upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council

229. The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam

230. (1) The functions of the Islamic Council shall be,—

(a) to make recommendations to Majlis-e-Shoora (Parliament) and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah,

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect, and

(d) to compile in a suitable form, for the guidance of Majlis-e-Shoora (Parliament) and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect

(2) When, under Article 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice

(3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished

Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the Injunctions of Islam the House or, as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made

(4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each Provincial Assembly within six months of its receipt, and Majlis-e-Shoora (Parliament) and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report

231. The proceedings of the Islamic Council shall be regulated by rules of procedure to be made by the Council with approval of the President

## PART X

### EMERGENCY PROVISIONS

232. (1) If the President is satisfied that a grave emergency exists in which the security of Pakistan, or any part thereof, is threatened by war or external aggression, or by internal disturbance beyond the power of a Provincial Government to control, he may issue a Proclamation of Emergency

(2) Notwithstanding anything in the Constitution, while a Proclamation of Emergency is in force,—

(a) Majlis-e-Shoora (Parliament) shall have power to make laws for a Province, or any part thereof, with respect to any matter not enumerated in the Federal Legislative List or the Concurrent Legislative List,

(b) the executive authority of the Federation shall extend to the giving of directions to a Province as to the manner in which the executive authority of the Province is to be exercised, and

(c) the Federal Government may by Order assume to itself, or direct the Governor of a Province to assume on behalf of the Federal Government, all or any of the functions of the Government of the Province, and all or any of the powers vested in, or exercisable by, any body or authority in the Province other than the Provincial Assembly, and make such incidental and consequential provisions as appear to the Federal Government to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending, in whole or in part, the operation of any provisions of the Constitution relating to any body or authority in the province

Provided that nothing in paragraph (c) shall authorize the Federal Government to assume to itself, or direct the Governor of the Province to assume on its behalf, any of the powers vested in or exercisable by a High Court, or to suspend either in whole or in part the operation of any provisions of the Constitution relating to High Courts

(3) The power of Majlis-e-Shoora (Parliament) to make laws for a Province with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties upon the Federation, or officers and authorities of the Federation, as respects that matter

(4) Nothing in this Article shall restrict the power of a Provincial Assembly to make any law which under the Constitution it has power to make but if any provision of a Provincial law is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) has under this Article power to make, the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Provincial law, shall prevail and the Provincial law shall to the extent of the repugnancy, but so long only as the Act of Majlis-e-Shoora (Parliament) continues to have effect, be void

(5) A law made by Majlis-e-Shoora (Parliament), which Majlis-e-Shoora (Parliament) would not but for the issue of a Proclamation of Emergency have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation of Emergency has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period

(6) While a Proclamation of Emergency is in force, Majlis-e-Shoora (Parliament) may by law extend the term of the National Assembly for a period not exceeding one year and not extending in any case beyond a period of six months after the Proclamation has ceased to be in force

(7) A Proclamation of Emergency shall be laid before a joint sitting which shall be summoned by the President to meet within thirty days of the Proclamation being issued and,—

(a) shall cease to be in force at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the joint sitting and

(b) shall, subject to the provisions of paragraph (e) cease to be in force upon a resolution disapproving the Proclamation being passed by the votes of the majority of the total memberships of the two Houses in joint sitting.

(2) Notwithstanding anything contained in clause (1) if the National Assembly stands dissolved at the time when a Proclamation of Emergency is issued the Proclamation shall continue in force for a period of four months but if a general election to the Assembly is not held before the expiration of that period, it shall cease to be in force at the expiration of that period unless it has earlier been approved by a resolution of the Senate.

233. (1) Nothing contained in Articles 15, 16, 17, 18, 19, and 24 shall while a Proclamation of Emergency is in force, restrict the power of the State as defined in Article 1 to make any law or to take any executive action which it would, but for the provisions in the said Articles be competent to make or to take, but any law so made shall to the extent of the incompetency, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation is revoked or has ceased to be in force.

(2) While a Proclamation of Emergency is in force the President may, by order, declare that the right to move any court for the enforcement of such of the Fundamental Rights conferred by Chapter 1 of Part II as may be specified in the order and any proceeding in any court which is for the enforcement or involves the determination of any question as to the infringement, of any of the Rights so specified, shall remain suspended for the period during which the Proclamation is in force, and any such order may be made in respect of the whole or any part of Pakistan.

(3) Every order made under this Article shall, as soon as may be, be laid before a joint sitting for approval and the provisions of clauses (1) and (2) of Article 232 shall apply to such an order as they apply to a Proclamation of Emergency.

234. (1) If the President, on receipt of a report from the Governor of a Province or otherwise, is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the Constitution the President may, or if a resolution in this behalf is passed at a joint sitting shall, by Proclamation —

(a) assume to himself, or direct the Governor of the Province to assume on behalf of the President, all or any of the functions of the Government of the Province, and all or any of the powers vested in, or exercisable by, any body or authority in the Province, other than the Provincial Assembly,

(b) declare that the powers of the Provincial Assembly shall be exercisable by, or under the authority of, *Majlis-e-Shoora (Parliament)* and

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in

part the operation of any provisions of the Constitution relating to any body or authority in the Province

Provided that nothing in this Article shall authorize the President to assume to himself, or direct the Governor of the Province to assume on his behalf, any of the powers vested in, or exercisable by, a High Court, or to suspend either in whole or in part the operation of any provisions of the Constitution relating to High Courts

(2) The provisions of Article 105 shall not apply to the discharge by the Governor of his functions under clause (1)

(3) A Proclamation issued under this Article shall be laid before a joint sitting and shall cease to be in force at the expiration of two months, unless before the expiration of that period it has been approved by resolution of the joint sitting and may by like resolution be extended for a further period not exceeding two months at a time, but no such Proclamation shall in any case remain in force for more than six months

(4) Notwithstanding anything contained in clause (3), if the National Assembly stands dissolved at the time when a Proclamation is issued under this Article, the Proclamation shall continue in force for a period of three months but, if a general election to the Assembly is not held before the expiration of that period, it shall cease to be in force at the expiration of that period unless it has earlier been approved by a resolution of the Senate

(5) Where by a Proclamation issued under this Article it has been declared that the powers of the Provincial Assembly shall be exercisable by or under the authority of Majlis-e-Shoora (Parliament), it shall be competent—

(a) to Majlis-e-Shoora (Parliament) in joint sitting to confer on the President the power to make laws with respect to any matter within the legislative competence of the Provincial Assembly,

(b) to Majlis-e-Shoora (Parliament) in joint sitting, or the President, when he is empowered under paragraph (a), to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties, upon the Federation, or officers and authorities thereof,

(c) to the President, when Majlis-e-Shoora (Parliament) is not in session to authorize expenditure from the Provincial Consolidated Fund, whether the expenditure is charged by the Constitution upon that fund or not, pending the sanction of such expenditure by Majlis-e-Shoora (Parliament) in joint sitting, and

(d) to Majlis-e-Shoora (Parliament) in joint sitting by resolution to sanction expenditure authorized by the President under paragraph (c)

(6) Any law made by Majlis-e-Shoora (Parliament) or the President which Majlis-e-Shoora (Parliament) or the President would not, but for the issue of a Proclamation under this Article, have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation under this Article has ceased to be in force except as to things done or omitted to be done before the expiration of that period

235. (1) If the President is satisfied that a situation has arisen whereby the economic life, financial stability or credit of Pakistan, or any part thereof, is threatened, he may, after consultation with the Governors of the Provinces or, as the case may be, the Governor of the Province concerned, by Proclamation make a declaration to that effect, and while such a Proclamation is in force, the executive authority of the Federation shall extend to the giving of directions to any Province to observe such principles of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary in the interest of the economic life, financial stability or credit of Pakistan or any part thereof

(2) Notwithstanding anything in the Constitution, any such directions may include a provision requiring a reduction of the salary and allowances of all or any class of persons serving in connection with the affairs of the Province

(3) While a Proclamation issued under this Article is in force the President may issue directions for the reduction of the salaries and allowances of all or any class of persons serving in connection with the affairs of the Federation.

(4) The provisions of clauses (3) and (4) of Article 234 shall apply to a Proclamation issued under this Article as they apply to a Proclamation issued under that Article

236. (1) A Proclamation issued under this part may be varied or revoked by a subsequent Proclamation

(2) The validity of any Proclamation issued or order made under this Part shall not be called in question in any court

237. Nothing in the Constitution shall prevent *Majlis-e-Shoora* (Parliament) from making any law indemnifying any person in the service of the Federal Government or a Provincial Government, or any other person, in respect of any act done in connection with the maintenance or restoration of order in any area in Pakistan

## PART XI

### AMENDMENT OF CONSTITUTION

238. Subject to this Part, the Constitution may be amended by Act of *Majlis-e-Shoora* (Parliament).

239. (1) A Bill to amend the Constitution may originate in either House and, when the Bill has been passed by the votes of not less than two-thirds of the total membership of the House, it shall be transmitted to the other House

(2) If the Bill is passed without amendment by the votes of not less than two-thirds of the total membership of the House to which it is transmitted under clause (1), it shall, subject to the provisions of clause (4), be presented to the President for assent

(3) If the Bill is passed with amendment by the votes of not less than two-thirds of the total membership of the House to which it is transmitted

under clause (1), it shall be reconsidered by the House in which it had originated, and if the Bill as amended by the former House is passed by the latter by the votes of not less than two-thirds of its total membership it shall, subject to the provisions of clause (4), be presented to the President for assent

(4) A Bill to amend the Constitution which would have the effect of altering the limits of a Province shall not be presented to the President for assent unless it has been passed by the Provincial Assembly of that Province by the votes of not less than two-thirds of its total membership

(5) No amendment of the Constitution shall be called in question in any court on any ground whatsoever

(6) For the removal of doubt, it is hereby declared that there is no limitation whatever on the power of the Majlis-e-Shoora (Parliament) to amend any of the provisions of the Constitution

## PART XII MISCELLANEOUS

### CHAPTER I SERVICES

240 Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined—

(a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Majlis-e-Shoora (Parliament), and

(b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly

*Explanation*—In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of Majlis-e-Shoora (Parliament)

241 Until the appropriate Legislature makes a law under Article 240, all rules and orders in force immediately before the commencing day shall, so far as consistent with the provisions of the Constitution, continue in force and may be amended from time to time by the Federal Government or, as the case may be, the Provincial Government

242 (1) Majlis-e-Shoora (Parliament) in relation to the affairs of the Federation and the Provincial Assembly of a Province in relation to affairs of a Province may by law, provide for the establishment and constitution of a Public Service Commission

(1A) The Chairman of the Public Service Commission constituted in relation to the affairs of the Federation shall be appointed by the President in his discretion

(2) A Public Service Commission shall perform such functions as may be prescribed by law.

## CHAPTER 2

### ARMED FORCES

243. (1) The Federal Government shall have control and command of the Armed Forces

(1A) Without prejudice to the generality of the foregoing provision, the Supreme Command of the Armed Forces shall vest in the President

(2) The President shall, subject to law, have power—

(a) to raise and maintain the Military, Naval and Air Forces of Pakistan and the Reserves of such Forces

(b) to grant Commissions in such Forces; and

(c) to appoint the Chairman, Joint Chiefs of Staff Committee the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff and determine their salaries and allowances

244. Every member of the Armed Forces shall make oath in the form set out in the Third Schedule

245. (1) The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so

(2) The validity of any direction issued by the Federal Government under clause (1) shall not be called in question in any court.

(3) A High Court shall not exercise any jurisdiction under Article 199 in relation to any area in which the Armed Forces of Pakistan are, for the time being acting in aid of civil power in pursuance of Article 245.

Provided that this clause shall not be deemed to affect the jurisdiction of the High Court in respect of any proceeding pending immediately before the day on which the Armed Forces start acting in aid of civil power.

(4) Any proceeding in relation to an area referred to in clause (3) instituted on or after the day the Armed Forces start acting in aid of civil power and pending in any High Court shall remain suspended for the period during which the Armed Forces are so acting

## CHAPTER 3

### TRIBAL AREAS

246. In the Constitution.—

(a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day were Tribal Areas and includes—

(i) the Tribal Areas of Baluchistan and the North-West Frontier Province, and

(ii) the former States of Amb, Chitral, Dir and Swat,

(b) "Provincially Administered Tribal Areas" means—

(i) The districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb, and

(ii) Zhob district, Loralai district (excluding Duka Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district, and

(c) Federally Administered Tribal Areas includes—

(i) Tribal Areas adjoining Peshawar district,

(ii) Tribal Areas adjoining Kohat district,

(iii) Tribal Areas adjoining Bannu district,

(iv) Tribal Areas adjoining Dera Ismail Khan district,

(v) Bajaur Agency,

(va) Orakzai Agency,

(vi) Mohmand Agency,

(vii) Khyber Agency,

(viii) Kurram Agency,

(ix) North Waziristan Agency, and

(x) South Waziristan Agency

247. (1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions

(3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs, and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction

(4) Notwithstanding anything contained in the Constitution, the President may with respect to any matter within the legislative competence of

Majlis-e-Shoora (Parliament), and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good Government of a Federally Administered Tribal Area or any part thereof

(6) The President may, at any time, by order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper

Provided that before making any order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless Majlis-e-Shoora (Parliament) by law otherwise provides

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day

## CHAPTER 4

### GENERAL

248. (1) The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions

Provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Federation or a Province

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office

(3) No process for the arrest or imprisonment of the President or a Governor shall issue from any court during his term of office

(4) No civil proceedings in which relief is claimed against the President or a Governor shall be instituted during his term of office in respect of anything done by or not done by him in his personal capacity whether before or after he enters upon his office unless, at least sixty days before the proceedings are instituted, notice in writing has been delivered to him, or sent to him in the manner prescribed by law, stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which the party claims

249. (1) Any legal proceedings which, but for the Constitution, could have been brought by or against the Federation in respect of a matter which, immediately before the commencing day, was the responsibility of the Federation and has, under the Constitution, become the responsibility of a Province, shall be brought by or against the Province concerned, and if any such legal proceedings were pending in any court immediately before the commencing day then, in those proceedings, for the Federation the Province concerned shall, as from that day, be deemed to have been substituted

(2) Any legal proceedings which, but for the Constitution, could have been brought by or against a Province in respect of a matter which, immediately before the commencing day, was the responsibility of the Province and has under the Constitution become the responsibility of the Federation, shall be brought by or against the Federation, and if any such legal proceedings were pending in any court immediately before the commencing day then, in those proceedings, for the Province the Federation shall, as from that day, be deemed to have been substituted

250. (1) Within two years from the commencing day, provision shall be made by law for determining the salaries, allowances and privileges of the President, the Speaker and Deputy Speaker and a member of the National Assembly or a Provincial Assembly, the Chairman and Deputy Chairman and a member of the Senate, the Prime Minister, a Federal Minister, a Minister of State, a Chief Minister, a Provincial Minister and the Chief Election Commissioner

(2) Until other provision is made by law,—

(a) the salaries, allowances and privileges of the President, the Speaker or Deputy Speaker or a member of the National Assembly or a Provincial Assembly, a Federal Minister, a Minister of State, a Chief Minister, a Provincial Minister and the Chief Election Commissioner shall be the same as the salaries, allowances and privileges to which the President, the Speaker or Deputy Speaker or member of the National Assembly of Pakistan or a Provincial Assembly, a Federal Minister, a Minister of State, a Chief Minister, a Provincial Minister or, as the case may be, the Chief Election Commissioner was entitled immediately before the commencing day, and

(b) the salaries, allowances and privileges of the Chairman, the Deputy Chairman, the Prime Minister and a member of the Senate shall be such as the President may by order determine

(3) The salary, allowances and privileges of a person holding office as—

(a) the President,

(b) the Chairman or Deputy Chairman,

(c) the Speaker or Deputy Speaker of the National Assembly or a Provincial Assembly,

(d) a Governor,

(e) the Chief Election Commissioner, or

(f) the Auditor-General, shall not be varied to his disadvantage during his term of office.

(4) At any time when the Chairman or Speaker is acting as President, he shall be entitled to the same salary, allowances and privileges as President but shall not exercise any of the functions of the office of Chairman or Speaker member of Majlis-e-Shoora (Parliament), or be entitled to salary, allowances or privileges as Chairman, Speaker or such a member

251. (1) The National language of Pakistan is Urdu, and arrangements shall be made for its being used for official and other purposes within fifteen years from the commencing day

(2) Subject to clause (1), the English language may be used for official purposes until arrangements are made for its replacement by Urdu

(3) Without prejudice to the status of the National language, a Provincial Assembly may by law prescribe measures for the teaching, promotion and use of a Provincial language in addition to the National language

252. (1) Notwithstanding anything contained in the Constitution or in any law, the President may, by public notification, direct that, for a period not exceeding three months from a specified date, a specified law, whether a Federal law or a Provincial law, shall not apply to a specified major port or major aerodrome, or shall apply to a specified major port or major aerodrome subject to specified exceptions or modifications

(2) The giving of a direction under this Article in relation to any law shall not affect the operation of the law prior to the date specified in the direction

253. (1) Majlis-e-Shoora (Parliament) may by law—

(a) prescribe the maximum limits as to property or any class thereof which may be owned, held, possessed or controlled by any person, and

(b) declare that any trade, business, industry or service specified in such law shall be carried on or owned, to the exclusion complete or partial, of other persons, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government

(2) Any law which permits a person to own beneficially or possess beneficially an area of land greater than that which, immediately before the commencing day, he could have lawfully owned beneficially or possessed beneficially shall be invalid

254. When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period

255. (1) An oath required to be made by a person under the Constitution shall preferably be made in Urdu or a language that is understood by that person

(2) Where, under the Constitution, an oath is required to be made before a specified person and, for any reason, it is impracticable for the oath to be made before that person, it may be made before such other person as may be nominated by that person

(3) Where, under the Constitution, a person is required to make an oath before he enters upon an office, he shall be deemed to have entered upon the office on the day on which he makes the oath

256. No private organization capable of functioning as a military organization shall be formed, and any such organization shall be illegal

257. When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State

258. Subject to the Constitution, until Majlis-e-Shoora (Parliament) by law otherwise provides, the President may, by order, make provisions for peace and good government of any part of Pakistan not forming part of a Province

259. (1) No citizen shall accept any title, honor or decoration from any foreign State except with the approval of the Federal Government

(2) No title, honor or decoration shall be conferred by the Federal Government or any Provincial Government on any citizen, but the President may award decorations in recognition of gallantry, meritorious service in the Armed Forces, academic distinction or distinction in the field of sports or nursing, as provided by Federal law

(3) All titles, honors and decorations awarded to citizens by any authority in Pakistan before the commencing day otherwise than in recognition of gallantry, meritorious service in the Armed Forces or academic distinction shall stand annulled

## CHAPTER 5

### INTERPRETATION

260. (1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,—

"Act of Majlis-e-Shoora (Parliament)" means an Act passed by Majlis-e-Shoora (Parliament) or the National Assembly and assented to, or deemed to have been assented to, by the President,

"Act of Provincial Assembly" means an Act passed by the Provincial Assembly of a Province and assented to, or deemed to have been assented to, by the Governor,

"agricultural income" means agricultural income as defined for the purpose of the law relating to income tax;

"Article" means Article of the Constitution

"borrow" includes the raising of money by the grant of annuities, and

"laws" shall be construed accordingly

"Chairman" means the Chairman of the Senate and, except in Article 49, includes a person acting as Chairman of the Senate,

"Chief Justices", in relation to the Supreme Court or a High Court, includes the Judge for the time being acting as Chief Justice of the Court,

"citizen" means a citizen of Pakistan as defined by law,

"clause" means clause of the Article in which it occurs,

"corporation tax" means any tax or income that is payable by companies and in respect of which the following conditions apply —

(a) the tax is not chargeable in respect of agricultural income,

(b) no deduction in respect of the tax paid by companies is, by any law which may apply to the tax, authorized to be made from dividends payable by the companies to individuals,

(c) no provision exists for taking the tax so paid into account in computing for the purposes of income tax the total income of individual receiving such dividends, or in computing the income tax payable by, or refundable to, such individuals,

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly,

"estate duty" means a duty assessed on, or by reference to, the value of property passing upon death,

"existing laws" has the same meaning as in clause (7) of Article 268,

"Federal laws" means a law made by or under the authority of *Majlis-e-Shoora* (Parliament),

"financial year" means a year commencing on the first day of July,

"goods" includes all materials, commodities and articles,

"Governor" means the Governor of a Province and includes any person for the time being acting as the Governor of a Province,

"guarantee" includes any obligation undertaken before the commencing day to make payments in the event of the profits of an undertaking falling short of a specified amount,

"House" means the Senate or the National Assembly,

"Joint sitting" means a joint sitting of the two Houses,

"Judge" in relation to the Supreme Court or a High Court, includes the Chief Justice of the Court and also includes—

(a) in relation to the Supreme Court, a person who is acting as a Judge of the Court, and

(b) in relation to the High Court, a person who is an Additional Judge of the Court,

"members of the Armed Forces" does not include persons who are not, for the time being, subject to any law relating of the members of the Armed Forces,

"net proceeds" means, in relation to any tax or duty, the proceeds thereof, reduced by the cost of collection, as ascertained and certified by the Auditor-General,

## Article 260]

"oath" includes affirmation,

"Part" means Part of the Constitution,

"pension" means a pension, whether contributory or not, of any kind whatsoever payable to, or in respect of, any person and includes retired pay so payable, a gratuity so payable, and any sum or sums so payable by way of the return, with or without interest thereon or any addition thereto, of subscriptions to a provident fund,

"person" includes any body politic or corporals;

"President" means the President of Pakistan and includes a person for the time being acting as, or performing the functions of, the President of Pakistan and, as respects anything required to be done under the Constitution before the commencing day, the President under the Interim Constitution of the Islamic Republic of Pakistan,

"Property" includes any right, title or interest in property, movable or immovable, and any means and instruments of production.

"Provincial law" means a law made by or under the authority of the Provincial Assembly,

"remuneration" includes salary and pension,

"Schedule" means Schedule to the Constitution,

"security of Pakistan" includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan, but shall not include public safety as such,

"Service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly;

"Speaker" means the Speaker of the National Assembly or a Provincial Assembly, and includes any person acting as the Speaker of the Assembly,

"taxation" includes the imposition of any tax or duty, whether general, local or special, and "tax" shall be construed accordingly,

"tax on income" includes a tax in the nature of an excess profits tax or a business profits tax

(2) In the Constitution "Act of Majlis-e-Shoora (Parliament)" or "Federal law" or "Act of Provincial Assembly" or "Provincial law" shall include an Ordinance promulgated by the President or, as the case may be, a Governor.

(3) In the Constitution and all enactments and other legal instruments, unless there is anything repugnant in the subject or context—

(a) "Muslim" means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him); and

(b) "non-Muslim" means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes.

261. For the purposes of the Constitution, a person who acts in an office shall not be regarded as the successor to the person who held that office before him or as the predecessor to the person who holds that office after him.

262. (1) For the purpose of the Constitution, period of time shall be reckoned according to the Gregorian calendar.

263. (1) In the Constitution,—

(a) words importing the masculine gender shall be taken to include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

264. Where a law is repealed or is deemed to have been repealed, by under, or by virtue of the Constitution the repeal shall not except as otherwise provided in the constitution.—

(a) revive anything not in force or existing at the time at which the repeal takes effect.

(b) affect the previous operation of the law or anything duly done or suffered under the law.

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or

(e) affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.

## Chapter 6

## TITLE, COMMENCEMENT AND REPEAL

265. (1) This Constitution shall be known as the Constitution of the Islamic Republic of Pakistan

(2) Subject to clauses (3) and (4), the Constitution shall come into force on the fourteenth day of August, one thousand nine hundred and seventy three or on such earlier day as the President may, by notification in the official Gazette, appoint, in the Constitution referred to as the "commencing day"

(3) The Constitution shall, to the extent necessary—

(a) for the constitution of the first Senate,

(b) for the first meeting of a House or a joint sitting to be held,

(c) for the election of the President and the Prime Minister to be held, and

(d) to enable any other thing to be done which, for the purposes of the Constitution, it is necessary to do before the commencing day, come into force upon the enactment of the Constitution, but the person elected as President or Prime Minister shall not enter upon his office before the commencing day

(4) Where by the Constitution a power is conferred to make rules or to issue orders with respect to the enforcement of any provision thereof, or with respect to the establishment of any Court or office, or the appointment of any Judge or office thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, anything is to be done under any such provisions, then that power may be exercised at any time between the enactment of the Constitution and its commencement

266. The Interim Constitution of the Islamic Republic of Pakistan, together with the Acts and President's Orders making omissions from, additions to, modifications of, or amendments in, that Constitution is hereby repealed.

## CHAPTER 7

## TRANSITIONAL

267. (1) At any time before the commencing day, or before the expiration of three months from the commencing day, the President may, for the purpose of removing any difficulties, or for bringing the provisions of the Constitution into effective operation, by order, direct that the provisions of the Constitution shall, during such period as may be specified in the order, have effect, subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient

(2) An order made under clause (1) shall be laid before both Houses without undue delay, and shall remain in force until a resolution disapproving it is passed by each House or, in case of disagreement between the two Houses, until such resolution is passed at a joint sitting

268. (1) Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature.

(2) The laws specified in the Sixth Schedule shall not be altered, repealed or amended without the previous sanction of the President.

(3) For the purpose of bringing the provisions of any existing law into accord with the provisions of the Constitution (other than Part II of the Constitution), the President may by order, within a period of two years from the commencing day, make such adaptation, whether by way of modification, addition or omission, as he may deem to be necessary or expedient, and any such order may be made so as to have effect from such day, not being a day earlier than the commencing day, as may be specified in the order.

(4) The President may authorize the Governor of a Province to exercise, in relation to the Province, the powers conferred on the President by clause (3) in respect of laws relating to matters with respect to which the Provincial Assembly has power to make laws.

(5) The powers exercisable under clauses (3) and (4) shall be subject to the provisions of an Act of the appropriate Legislature.

(6) Any court, tribunal or authority required or empowered to enforce an existing law shall, notwithstanding that no adaptations have been made in such law by an order made under clause (3) or clause (4), construe the law with all such adaptations as are necessary to bring it into accord with the provisions of the Constitution.

(7) In this Article, "existing laws" means all laws (including Ordinances, Orders-in-Council, Orders, rules, by-laws, regulations and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extraterritorial validity, immediately before the commencing day.

*Explanation.*—In this Article, "in force", in relation to any law, means having effect as law whether or not the law has been brought into operation.

269. (1) All Proclamations, President's Orders, Martial Law Regulations, Martial Law Orders and all other laws made between the twentieth day of December, one thousand nine hundred and seventy-one and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive), are hereby declared notwithstanding any judgment of any court, to have been validly made by competent authority and shall not be called in question in any court on any ground whatsoever.

(2) All orders made, proceedings taken and acts done by any authority, or by any person, which were made, taken or done, or purported to have been made, taken or done, between the twentieth day of December, one thousand nine hundred and seventy-one, and the twentieth day of April, one thousand nine hundred and seventy-two (both days inclusive) in exercise of the powers derived from any President's Orders, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or by-laws or in

execution of any orders made or sentences passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court on any ground whatsoever

(3) No suit or other legal proceedings shall lie in any court against any authority or any person for or on account of or in respect of any order made, proceedings taken or act done whether in the exercise or purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers

270 (1) *Majlis-e-Shoora* (Parliament) may by law made in the manner prescribed for legislations for a matter in Part I of the Federal Legislative List validate all Proclamations, President's Orders, Martial Law Regulations, Martial Law Orders and other laws made between the twenty-fifth day of March, one thousand nine hundred and sixty-nine and the nineteenth day of December, one thousand nine hundred and seventy-one (both days inclusive)

(2) Notwithstanding a judgment of any court, a law made by *Majlis-e-Shoora* (Parliament) under clause (1) shall not be questioned in any court on any ground whatsoever

(3) Notwithstanding the provisions of clause (1), and a judgment of any court to the contrary, for a period of two years from the commencing day, the validity of all such instruments as are referred to in clause (1) shall not be called in question before any court on any ground whatsoever

(4) All orders made, proceedings taken and acts done by any authority, or any person, which were made, taken or done, or purported to have been made, taken or done, between the twenty-fifth day of March, one thousand nine hundred and sixty-nine and nineteenth day of December, one thousand nine hundred and seventy-one (both days inclusive), in exercise of powers derived from any President's Orders, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or by-laws, or in execution of any order made or sentence passed by any authority in the exercise or purported exercise of power as aforesaid shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done, so however that any such order, proceeding or act may be declared invalid by *Majlis-e-Shoora* (Parliament) at any time within a period of two years from the commencing day by resolution of both Houses, or in case of disagreement between the two Houses, by such resolution passed at a joint sitting and shall not be called in question before any court on any ground whatsoever

270A. (1) The Proclamation of the fifth day of July, 1977, all President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders, including the Referendum Order, 1984 (P O No 11 of 1984), under which, in consequence of the result of the referendum held on the nineteenth day of December 1984 General Muhammad Zia-ul-Haq became the President of

Pakistan on the day of the first meeting of the *Majlis-e-Shoora* (Parliament) in joint sitting for the term specified in clause (7) of Article 41, the Revival of the Constitution of 1973 Order, 1985 (P O No 14 of 1985), the Constitution (Second Amendment) Order 1985 (P O No 24 of 1985), and all other laws, made between the fifth day of July, 1977, and the date on which this Article comes into force are hereby affirmed, adopted and declared, notwithstanding any judgment of any court, to have been validly made by competent authority and, notwithstanding anything contained in the Constitution, shall not be called in question in any court on any ground whatsoever

Provided that a President's Order, Martial Law Regulation or Martial Law Order made after the thirtieth day of September, 1985, shall be confined only to making such provisions as facilitate, or are incidental to, the revocation of the Proclamation of the fifth day of July, 1977

(2) All order made, proceedings taken and acts done by any authority or by any person, which were made, taken or done, or purported to have been made, taken or done, between the fifth day of July, 1977, and the date on which this Article comes into force, in exercise of the powers derived from any Proclamation, President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or by-laws, or in execution of or in compliance with any order made or sentence passed by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court on any ground whatsoever

(3) All President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders, enactments, notifications, rules, orders or by-laws in force immediately before the date on which this Article comes into force shall continue in force until altered, repealed or amended by competent authority

*Explanation* —In this clause, Competent authority means—

(a) in respect of President's Orders, Ordinances, Martial Law Regulations, Martial Law Orders and enactments, the Legislature, and

(b) in respect of notifications, rules orders and by-laws, the authority in which the power to made, alter, repeal or amend the same vests under the law

(4) No suit, prosecution or other legal proceedings shall lie in any court against any authority or any person, for or on account of or in respect of any order made, proceedings taken or act done whether in the exercise or purported exercise of the powers referred to in clause (2) or in execution of or in compliance with orders made or sentences passed in exercise or purported exercise of such powers

(5) For the purposes of clauses (1), (2) and (4), all orders made, proceedings taken, acts done or purporting to be made, taken or done by any authority or person shall be deemed to have been made, taken or done in good faith and for the purpose intended to be served thereby

(6) Such of the President's Orders and Ordinances referred to in clause (1) as are specified in the Seventh Schedule may be amended in the manner provided for amendment of the Constitution, and all other laws referred to in the said clause may be amended by the appropriate Legislature in the manner provided for amendment of such laws

*Explanation*—In this Article "President's Orders" includes "President and Chief Martial Law Administrator's Orders" and "Chief Martial Law Administrator's Orders"

270B. Notwithstanding anything contained in the Constitution, the elections held under the Houses of (Parliament) and Provincial Assemblies (Elections) Order, 1977 to the Houses and the Provincial Assemblies shall be deemed to have been held under the Constitution and shall have effect accordingly

271. (1) Notwithstanding anything contained in the Constitution, but subject to Article 64 and Article 223,—

(a) the first National Assembly shall consist of—

(i) persons who have taken oath in the National Assembly of Pakistan existing immediately before the commencing day, and

(ii) the persons to be elected in accordance with law by the members of the Assembly to fill the seats referred to in clause (2A) of Article 51, and,

unless sooner dissolved, shall continue until the fourteenth day of August, one thousand nine hundred and seventy-seven, and reference to "total membership" of the National Assembly in the Constitution shall be construed accordingly,

(b) the qualifications and disqualifications for being elected and being a member of the first National Assembly shall, except in case of members filling casual vacancies or to be elected to the additional seats referred to in clause (2A) of Article 51, after the commencing day, be the same as under the Interim Constitution of the Islamic Republic of Pakistan

Provided that no person holding an office of profit in the service of Pakistan shall continue to be a member of the first National Assembly after the expiration of three months from the commencing day.

(2) If a person referred to in paragraph (a) of clause (1) is, immediately before the commencing day, also a member of a Provincial Assembly, he shall not take a seat in the National Assembly or the Provincial Assembly until he resigns one of his seats

(3) A casual vacancy in a seat in the first National Assembly, including a vacancy in a seat in the National Assembly of Pakistan existing before the commencing day which was not filled before that day, caused by reason of death or resignation of a member or consequent upon his incurring a disqualification or easily to be a member as a result of the final decision of an election petition may be filled in the same manner in which it would have been filled before the commencing day

(4) A person referred to in paragraph (a) of clause (1) shall not sit or vote in the National Assembly until he has made the oath prescribed by Article 65 and, if, without the leave of the Speaker of the National Assembly granted on reasonable cause shown, he fails to make the oath within twenty-one days from the day of the first meeting of the Assembly, his seat shall become vacant at the expiration of that period

272. Notwithstanding anything contained in the Constitution, but subject to Article 63 and Article 223,—

(a) the Senate shall, until the first National Assembly under the Constitution continues in existence, consist of forty-five members and the provisions of Article 59 shall have effect as if, in paragraph (a) of clause (1) thereof, for the word "fourteen" the word "ten" and in paragraph (b) of that clause for the word "five" the word "three", were substituted, and reference to "total memberships" of the Senate in the Constitution shall be construed accordingly,

(b) the members elected or chosen as members of the Senate shall be divided into two groups by drawing of lots, the first group consisting of five members from each Province, two members from the Federally Administered Tribal Areas and one member from the Federal Capital and the second group consisting of five members from each Province one member from the said Areas and one member from the Federal Capital,

(c) the term of office of members of the first group and of the second group shall respectively be two years and four years,

(d) the term of office of persons elected or chosen to succeed the members of the Senate at the expiration of their respective terms shall be four years,

(e) the term of office of a person elected or chosen to fill a casual vacancy shall be the unexpired term of the member whose vacancy he is elected or chosen to fill,

(f) as soon as the first general election to the National Assembly is held, there shall be elected to the Senate four additional members from the Federally Administered Tribal Areas, and

(g) the term of office of such half of the members elected under paragraph (f) as may be determined by drawing of lots shall be the unexpired term of office of the members of the first group and the term of office of the other half shall be the unexpired term of the members of the second group

273. (1) Notwithstanding anything contained in the Constitution, but subject to Article 63, Article 64 and Article 223,—

(a) the first Assembly of a Province under the Constitution shall consist of—

(i) the members of the Assembly of that Province in existence immediately before the commencing day, and

(u) the additional members to be elected in accordance with law by the members of the Assembly to fill the seats referred to in clause (3) of Article 106, and, unless sooner dissolved, shall continue until the fourteenth day of August, one thousand nine hundred and seventy-seven, and reference to "total membership" of the Assembly of a Province in the Constitution shall be construed accordingly,

(b) the qualifications and disqualifications for membership of the first Assembly of a Province shall, except in case of members filling casual vacancies, or to be elected to the additional seats referred to in clause (3) of Article 106, after the commencing day, be the same as were provided in the Interim Constitution of the Islamic Republic of Pakistan

Provided that no person holding an office of profit in the service of Pakistan shall continue to be a member of the Assembly after the expiration of three months from the commencing day

(2) A casual vacancy in a seat in the first Assembly of a Province, including a vacancy in a seat in the Assembly of that Province in existence immediately before the commencing day which was not filled before that day, caused by reason of death or resignation of a member or consequent upon his incurring a disqualification or ceasing to be a member as a result of the final decision of an election petition may be filled in the same manner in which it would have been filled before the commencing day

(3) A member referred to in paragraph (a) of clause (1) shall not sit or vote in the Provincial Assembly until he has made the oath prescribed by Article 65 read with Article 127 and, if, without leave of the Speaker of the Provincial Assembly granted on reasonable cause shown, he fails to make the oath within twenty-one days from the day of the first meeting of the Provincial Assembly, his seat shall become vacant at the expiration of that period

274. (1) All property and assets which, immediately before the commencing day, were vested in the President or the Federal Government shall, as from that day, vest in the Federal Government unless they were used for purposes which, on that day, became purposes of the Government of a Province, in which case they shall, as from that day, vest in the Government of the Province

(2) All property and assets which, immediately before the commencing day, were vested in the Government of a Province, shall, as from that day, continue to be vested in the Government of that Province, unless they were used for purposes, which on that day, became purposes of the Federal Government in which case they shall, as from that day, vest in the Federal Government

(3) All rights, liabilities and obligations of the Federal Government or of the Government of a Province, whether arising out of contract or otherwise, shall as from the commencing day, continue to be respectively the rights, liabilities and obligations of the Federal Government or of the Government of the Province except that—

(a) all rights, liabilities and obligations relating to any matter which, immediately before that day, was the responsibility of the Federal Government, but which under the Constitution, has become the responsibility of the Government of a Province, shall devolve upon the Government of that Province; and

(b) all rights, liabilities and obligations relating to any matter which, immediately before that day, was the responsibility of the Government of a Province, but which under the Constitution, has become the responsibility of Federal Government, shall devolve upon the Federal Government

275. (1) Subject to the Constitution and until law is made under Article 240 any person who, immediately before the commencing day, was in the service of Pakistan shall, as from that day, continue in the service of Pakistan on the same terms and conditions as were applicable to him under the Interim Constitution of the Islamic Republic of Pakistan immediately before that day

(2) Clause (1) shall also apply in relation to a person holding office immediately before the commencing day as—

(a) Chief Justice of Pakistan or other Judge of the Supreme Court, or Chief Justice or other Judge of a High Court,

(b) Governor of a Province,

(c) Chief Minister of a Province,

(d) Speaker or Deputy Speaker of the National Assembly or a Provincial Assembly,

(e) Chief Election Commissioner,

(f) Attorney-General for Pakistan or Advocate-General for a Province,

(g) Auditor-General of Pakistan

(3) Notwithstanding anything contained in the Constitution, for a period of six months from the commencing day, a Federal Minister or a Minister of State or the Chief Minister of a Province or a Provincial Minister may be a person who is not a member of Majlis-e-Shoora (Parliament) or, as the case may be, the Provincial Assembly of that Province, and such Chief Minister and Provincial Minister shall have the right to speak and otherwise take part in the proceedings of the Provincial Assembly or any committee thereof of which he may be named a member, but shall not by virtue of this clause be entitled to vote.

(4) Any person who under this Article, is continued in an office in respect of which a form of oath is set out in the Third Schedule shall, as soon as is practicable after the commencing day make before the appropriate person oath in that form

(5) Subject to the Constitution and law—

(a) all civil, criminal and revenue courts exercising jurisdiction and functions immediately before the commencing day shall, as from that day, continue to exercise their respective jurisdictions and functions; and

(b) all authorities and all offices (whether judicial, executive, revenue or ministerial) throughout Pakistan exercising functions immediately before the commencing day shall, as from that day, continue to exercise their respective functions

276 Notwithstanding anything contained in the Constitution, the first President may, in the absence of the Chief Justice of Pakistan, make the oath referred to in Article 42 before the Speaker of the National Assembly

277. (1) The schedule of authorized expenditure authenticated by the President for the financial year ending on the thirtieth day of June, one thousand nine hundred and seventy-four, shall continue to remain a valid authority for expenditure from the Federal Consolidated Fund for that year

(2) The President may, in respect of expenditure of the Federal Government for any financial year preceding the financial year commencing on the first day of July, one thousand nine hundred and seventy-three (being expenditure in excess of the authorized expenditure for that year), authorize the withdrawal of money from the Federal Consolidated Fund

(3) The provisions of clauses (1) and (2) shall apply to and in relation to a Province, and for that purpose—

(a) any reference in those provisions to the President shall be read as a reference to the Governor of the Province,

(b) any reference in those provisions to the Federal Government shall be read as a reference to the Government of the Province, and

(c) any reference in those provisions to the Federal Consolidated Fund shall read as a reference to the Provincial Consolidated Fund of the Province

278 The Auditor-General shall perform the same functions and exercise the same powers in relation to accounts which have not been completed or audited before the commencing day as, by virtue of the Constitution, he is empowered to perform or exercise in relation to other accounts, and Article 171 shall, with the necessary modifications, apply accordingly

279. Notwithstanding anything contained in the Constitution, all taxes and fees levied under any law in force immediately before the commencing day shall continue to be levied until they are varied or abolished by Act of the appropriate Legislature

280. The Proclamation of Emergency issued on the twenty-third day of November, one thousand nine hundred and seventy-one, shall be deemed to be a Proclamation of Emergency issued under Article 232, and for the purposes of clause (7) and clause (8) thereof to have been issued on the commencing day, and any law, rule or order made or purporting to have been made in pursuance of that Proclamation shall be deemed to have been validly made and shall not be called in question in any court on the ground of inconsistency with any of the rights conferred by Chapter 1 of Part II.

## ANNEX

## Article 2(A)

## The Objectives Resolution

The Objectives Resolution was passed by the Constituent Assembly of Pakistan in March, 1949, and was made a substantive part of the Constitution of Pakistan by P O (Presidential Order) No 14 of 1985, Art 2 and Sch item 2 (with effect from March 2, 1985)

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust,

This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan,

Wherein the State shall exercise its powers and authority through the chosen representatives of the people,

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed,

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah,

Wherein adequate provision shall be made for the minorities to profess and practice their religions and develop their cultures,

Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed,

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality,

Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes,

Wherein the independence of the Judiciary shall be fully secured,

Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded,

So that the people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity

**FIRST SCHEDULE****Article 8(3)(b) and (4)**

**Laws exempted from the operation of Article 8(1) and (2).**

**PART I****I. President's Orders**

- 1 The Acceding State (Property) Order, 1961 (P O No 12 of 1961)
- 2 The Economic Reforms Order, 1972 (P O No 1 of 1972)

**II Regulations**

- 1 The Land Reforms Regulation, 1972
- 2 The Land Reforms (Baluchistan Pat Feeder Canal) Regulation, 1972
- 3 The Economic Reforms (Protection of Industries) Regulation, 1972.
- 4 The Distribution of Property (Chitral) Regulation, 1974 (II of 1974).
- 5 The Statement of Disputes of Immovable Property (Chitral) Regulation, 1974 (III of 1974)
- 6 The Dir and Swat (Devolution and Distribution of Property and Settlement of Disputes of Immovable Property) (Amendment) Regulation, 1975 (II of 1976)
- 7 The Settlement of Disputes of Immovable Property (Chitral) (Amendment) Regulation 1976 (II of 1976)

**III Federal Acts**

- 1 The Land Reforms (Amendment) Act, 1974 (XXX of 1974).
- 2 The Land Reforms (Amendment) Act, 1975 (XXXIX of 1975)
- 3 The Flour Milling Control and Development Act, 1976 (LVII of 1976)
- 4 The Rice Milling Control and Development Act, 1976 (VIII of 1976)
- 5 The Cotton Ginning Control and Development Act, 1976 (LIX of 1976)

**IV. Ordinances Promulgated By The President**

The Land Reforms (Amendment) Ordinance, 1975 (XXI of 1975), and the Federal Act enacted to replace the said Ordinance

**V. Provincial Acts**

- 1 The Land Reforms (Baluchistan Amendment) Act, 1974 (Baluchistan Act XI of 1974)
- 2 The Land Reforms (Pat Feeder Canal Regulation) (Amendment) Act, 1975 (Baluchistan Act VII of 1975)

**VI Provincial Ordinance**

The Land Reforms (Pat Feeder Canal) (Amendment) Ordinance, 1976

**PART II****I. President's Orders**

- 1 The Minerals (Acquisition and Transfer) Order, 1961 (P O No 8 of 1961)
- 2 The Companies (Managing Agency and Election of Directors) Order, 1972 (P O No 2 of 1972)
- 3 The Cooperative Societies (Reforms) Order, 1972 (P O No 9 of 1972)
- 4 The Life Insurance (Nationalization) Order, 1972 (P O No 10 of 1972)
- 5 The Martial Law (Pending Proceedings) Order, 1972 (P O No 14 of 1972)
- 6 The Rulers of Acceding States Acceding States (Abolition of Privy Purses and Privileges) Order, 1972 (P O No 15 of 1972)
- 7 The Industrial Sanctions and Licences (Cancellation) Order, 1972 (P O No 16 of 1972)
- 8 The Criminal Law Amendment (Special Court) Order, 1972 (P O No 20 of 1972)

**II. Regulations**

- 1 Rawalpindi (Requisition of Property) Regulation, 1959
- 2 The Pakistan Capital Regulation, 1960
- 3 The Scrutiny of Claims (Evacuee Property) Regulation, 1961
- 4 The Income Tax (Correction of Returns and False Declaration) Regulation, 1969
- 5 The Improper Acquisition of Property Regulation, 1969
- 6 The Removal from Service (Special Provisions) Regulation, 1969
- 7 The Living Beyond Ostensible Means (Punishment) Regulation, 1969
8. The Government Agricultural Land (Recovery of Illegal Possession) Regulation, 1969.
- 10 The Withdrawal of Currency Notes (High Denomination) Regulation, 1971
- 11 The Price of Evacuee Property and Public Dues (Recovery) Regulation, 1971
- 12 The Peshawar District and Tribal Areas (Settlement of Disputes) Regulation, 1971
- 13 The Convention Muslim League and Awami League (Scrutiny of Funds) Regulation, 1971
- 14 The Foreign Exchange Repatriation Regulation, 1972
- 15 The Foreign Assets (Declaration) Regulation, 1972
- 16 The Removal from Service (Review Petition) Regulation, 1972
- 17 The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972

Sch I]

- 18 The Enemy Property (Revocation of Sales) Regulation, 1972
- 19 The Dir and Swat (Devolution and Distribution of Property) Regulation, 1972
- 21 The West Pakistan Industrial Development Corporation (Revocation of Sale or Transfer) Regulation, 1972
- 22 The National Press Trust (Suspension of Board of Trustees and Directors) Regulation, 1972
- 23 The Cooperative Banks (Repayment of Loans) (Punjab) Regulation, 1972
- 24 The Cooperative Societies (Repayment of Loans) (Sind) Regulation, 1972

### III Ordinances Promulgated By The President

- 1 The Control of Shipping Ordinance, 1959 (XIII of 1959)
- 2 The Jammu and Kashmir (Administration of Property) Ordinance, 1961 (III of 1961)
- 3 The Muslim Family Laws Ordinance, 1961 (VIII of 1961 (XIV of 1961)
- 4 The Security of Pakistan (Amendment) Ordinance, 1961 (XIV of 1961)
- 5 The Associated Press of Pakistan (Taking Over) Ordinance, 1961 (XX of 1961)
- 6 The Trade Organizations Ordinance, 1961 (XLV of 1961)

### IV. Federal Acts

The Censorship of Films Act, 1963 (XVIII of 1963)

### V. Ordinances Promulgated By The Governor of Former Province Of West Pakistan

- 1 The West Pakistan Government Educational and Training Institutions Ordinance, 1960 (W P Ordinance No XI of 1960)
- 2 The West Pakistan Waqf Properties Ordinance, 1961 (W P Ordinance No XXVIII of 1961)
- 3 The Societies Registration (West Pakistan Amendment) Ordinance, 1962 (W P Ordinance No IX of 1962)
- 4 The West Pakistan Industries (Control on Establishment and Enlargement) Ordinance, 1963 (W P Ordinance No IV of 1963)

### VI Ordinances Promulgated By The Governor Of The North-West Frontier Province.

- 1 The North-West Frontier Province Government Educational and Training Institutions Ordinance, 1971 (N W F P Ordinance No III of 1971)
- 2 The North-West Frontier Province Chashma Right Bank Canal Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N W F P Ordinance No V of 1971)
- 3 The North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N W F P Ordinance No VIII of 1971)

**SECOND SCHEDULE****Article 4(3)****Election of President**

1. The Chief Election Commissioner shall hold and conduct election to the office of President, and shall be the Returning Officer for such election

2. The Chief Election Commissioner appoint Presiding Officers to preside at the meeting of the members of *Majlis-e-Shoora* (Parliament) and at the meetings of the members of the Provincial Assemblies

3. The Chief Election Commissioner shall by public notification fix the time and place for depositing nomination papers, holding a scrutiny, making withdrawals, if any, and holding the poll, if necessary

4. At any time before noon on the day fixed for nomination any member of the *Majlis-e-Shoora* (Parliament) or of the *Majlis-e-Shoora* (Parliament) or of a Provincial Assembly may nominate for election as President a person qualified for election as President by delivering to the Presiding Officer a nomination paper, signed by himself as proposer and by another member of the *Majlis-e-Shoora* (Parliament) or, as the case may be Assembly as seconder, together with a statement signed by the person nominated that he consents to the nomination

Provided that no person shall subscribe, whether as proposer or as seconder, more than one nomination paper at any one election

5. The scrutiny shall be held by the Chief Election Commissioner at the time and place fixed by him, and if after scrutiny only one person remains validly nominated, the Chief Election Commissioner shall declare that person to be elected, or if more than one person remains validly nominated, he shall announce, by public notification, the names of the persons validly nominated, to be hereinafter called the candidates

6. A candidate may withdraw his candidature at any time before noon on the day fixed for this purpose by delivering a notice in writing under his hand to the Presiding Officer with whom his nomination paper has been deposited, and a candidate who has given a notice of withdrawal of his candidature under this paragraph shall not be allowed to cancel that notice

7. If all but one of the candidates have withdrawn, that one shall be declared by the Chief Election Commissioner to be elected

8. If there is no withdrawal, or if, after withdrawals have taken place, two or more candidates are left, the Chief Election Commissioner shall announce by public notification the names of the candidates, and their proposers and seconders, and shall proceed to hold a poll by secret ballot in accordance with the provisions of the succeeding paragraphs

9. If a candidate whose nomination has been found to be in order dies after the time for nomination, and a report of his death is received by the Presiding Officer before the commencement of the poll, the Presiding Officer shall, upon, being satisfied of the fact of the death of the candidate,

Sch 11]

countermand the poll and report the fact to the Chief Election Commissioner, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll

Provided further that no person who has under paragraph 6 of the this Schedule given notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding

10 The poll shall be taken at the meetings of Majlis-e-Shoora (Parliament) and of each Provincial Assembly, and respective Presiding Officers shall conduct the poll with the assistance of such officers as they may, with the approval of the Chief Election Commissioner, respectively appoint

11. A ballot paper shall be issued to every member of Majlis-e-Shoora (Parliament), and of each Provincial Assembly, who presents himself for voting at the meeting of the members of the Majlis-e-Shoora (Parliament) or, as the case may be, of the Provincial Assembly of which he is a member (hereinafter referred to as a person voting), and he shall exercise his vote personally by marking the paper in accordance with the provisions of the succeeding paragraphs

12. The poll shall be secret ballot by means of ballot papers containing the names of all the candidates in alphabetical order who have not withdrawn, and person voting shall vote by placing a mark against the name of the person for whom he wishes to vote

13 Ballot papers shall be issued from a book of ballot-papers with counterfoils, each counterfoil being numbered, and when a ballot paper is issued to a person voting his name shall be entered on the counterfoil, and the ballot paper shall be authenticated by the initials of the Presiding Officer.

14. A ballot paper having been marked by the person voting shall be deposited by that person in a ballot box to be placed in front of the Presiding Officer

15 If a ballot paper is spoiled by a person voting he may return it to the Presiding Officer, who shall issue a second ballot paper, canceling the first ballot paper and marking the cancellation on the appropriate counterfoil

16 A ballot paper shall be invalid if—

- (i) there is upon it any name, word or mark, by which the person voting may be identified, or
- (ii) it does not contain the initials of the Presiding Officer, or
- (iii) it does not contain a mark, or
- (iv) a mark is placed against the names of two or more candidates, or
- (v) there is any uncertainty as to the identity of the candidate against whose name the mark is placed

17. After the close of the poll each Presiding Officer shall, in the presence of such of the candidates or their authorized representatives as may desire to be present, open and empty the ballot boxes and examine the ballot papers therein, rejecting any which are invalid, count the number of votes recorded for each candidate on the valid ballot papers, and communicate the number of the votes so recorded to the Chief Election

18. (1) The Chief Election Commissioner shall determine the result of the election in the following manner, namely—

(a) the number of votes cast in the Majlis-e-Shoora (Parliament) in favour of each candidate shall be counted,

(b) the number of votes cast in a Provincial Assembly in favour of each candidate shall be multiplied by the total number of seats in the Provincial Assembly for the time being having the smallest number of seats and divided by the total number of seats in the Provincial Assembly in which the votes have been cast, and

(c) the number of votes calculated in the manner referred to in clause (b) shall be added to the number of votes counted under clause (a)

*Explanation*—In this paragraph, "total number of seats" includes seats reserved for non-Muslims and women

(2) A fraction shall be rounded off to the nearest whole

19. The candidate who has obtained the largest number of votes compiled in the manner specified in paragraph 18 shall be declared by the Chief Election Commissioner to be elected

20. Where at any poll any two or more candidates obtain an equal number of votes, the selection of the candidate to be elected shall be by drawing of lots

21. When, after any poll, the counting of the votes has been completed, and the result of the voting determined, the Chief Election Commissioner shall forthwith announce the result to those present, and shall report the result to the Federal Government, who shall forthwith cause the result to be declared by a public notification

22. The Chief Commissioner may, by public notification, with the approval of the President, make rules for carrying out the purposes of this Schedule

**THIRD SCHEDULE****Oaths of Office****PRESIDENT****[Article 42]**

(In the name of Allah, the most Beneficent, the most Merciful )

I, \_\_\_\_\_, do solemnly swear that I am a Muslim and believe in the Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophethood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgment, and all the requirements and teachings of the Holy Quran and Sunnah

That I will bear true faith and allegiance to Pakistan

That, as President of Pakistan, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will not allow my personal interest to influence my official conduct or my official decisions

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as President of Pakistan, except as may be required for the due discharge of my duties as President

May Allah Almighty help and guide me (A'meen)

**PRIME MINISTER****[Article 91(4)]**

(In the name of Allah, the most Beneficent, the most Merciful )

I, \_\_\_\_\_, do swear solemnly that I am a Muslim and believe in the Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophethood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgment and all the requirements and teachings of the Holy Quran and Sunnah

That I will bear true faith and allegiance to Pakistan;

That, as Prime Minister of Pakistan, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.

That I will not allow my personal interest to influence my official conduct or my official decisions.

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan.

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Prime Minister except as may be required for the due discharge of my duties as Prime Minister.

May Allah Almighty help and guide me (A'meen)

#### FEDERAL MINISTER OR MINISTER OF STATE

[Article 92(2)]

(In the name of Allah, the most Beneficent, the most Merciful)

I, ... do solemnly swear that I will bear true faith and allegiance to Pakistan.

That, as Federal Minister (or Minister of State), I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.

That I will not allow my personal interest to influence my official conduct or my official decisions.

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan.

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Federal Minister (or Minister of State), except as may

be required for the due discharge of my duties as Federal Minister (or Minister of State), or as may be specially permitted by the Prime Minister

May Allah Almighty help and guide me (A'meen)

### **SPEAKER OF NATIONAL ASSEMBLY OR CHAIRMAN OF SENATE**

[Article 53 (2) and 61]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . , do solemnly swear that I will bear true faith and allegiance to Pakistan

That, as Speaker of the National Assembly (or Chairman of the Senate) and whenever I am called upon to act as President of Pakistan, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully, accordance with the Constitution of the Islamic Republic of Pakistan, the law and as Speaker of the National Assembly in accordance with the rules of the Assembly (or as Chairman of the Senate in accordance with the rules of the Senate), and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan

That I will not allow my personal interest to influence my official conduct or my official decisions

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will

May Allah Almighty help and guide me (A'meen)

### **DEPUTY SPEAKER OF NATIONAL ASSEMBLY OR DEPUTY CHAIRMAN OF SENATE**

[Article 53 (2) and 61]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . , do solemnly swear that I will bear true faith and allegiance to Pakistan

That, whenever I am called upon to act as Speaker of the National Assembly (or Chairman of the Senate), I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan, the law and the rules of the Assembly (or Senate), and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan

That I will not allow my personal interest to influence my official conduct or my official decisions.

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan.

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will

May Allah Almighty help and guide me (A'meen).

#### MEMBER OF NATIONAL ASSEMBLY OR MEMBER OF SENATE

[Article 65]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . . ., do solemnly swear that I will bear true faith and allegiance to Pakistan

That as a member of the National Assembly (or Senate), I will perform my functions honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and the rules of the Assembly (or Senate), and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.

And that I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

May Allah Almighty help and guide me (A'meen)

#### GOVERNOR OF PROVINCE

[Article 102]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . . ., do solemnly swear that I will bear true faith and allegiance to Pakistan

That, as the Governor of the Province of . . . . ., I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan

That I will not allow my personal interest to influence my official conduct or my official decisions

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Governor of the Province of . . . except as may be required for the due discharge of my duties as Governor

May Allah Almighty help and guide me (A'meen)

### CHIEF MINISTER OR PROVINCIAL MINISTER

[Articles 131 (4) and 132 (2)]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . , do solemnly swear that I will bear true faith and allegiance to Pakistan

That, as a Chief Minister (or Minister) of the Government of the Province of . . . , I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan

That I will not allow my personal interest to influence my official conduct or my official decisions

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favor, affection or ill-will

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Chief Minister (or Minister) except as may be required for the due discharge of my duties as Chief Minister (or Minister) or as may be specially permitted by the Chief Minister.

May Allah Almighty help and guide me (A'meen)

### SPEAKER OF A PROVINCIAL ASSEMBLY

[Articles 53 (2) and 127]

(In the name of Allah, the most Beneficent, the most Merciful)

I, . . . do solemnly swear that I will bear true faith and allegiance to Pakistan

That, as Speaker of the Provincial Assembly of the Province of . . . I will discharge my duties, and perform my functions

honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan, the law and the rules of the Assembly, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan:

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan:

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

May Allah Almighty help and guide me (A'meen).

#### DEPUTY SPEAKER OF A PROVINCIAL ASSEMBLY

[Articles 53 (2) and 127]

(In the name of Allah, the most Beneficent, the most Merciful.)

I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That, whenever I am called upon to act as Speaker of the Provincial Assembly of the Province of \_\_\_\_\_, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan, the law and the rules of the Assembly, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan:

That I will strive to preserve the Islamic ideology which is the basis for the creation of Pakistan:

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

May Allah Almighty help and guide me (A'meen).

#### MEMBER OF A PROVINCIAL ASSEMBLY

[Articles 65 and 127]

(In the name of Allah, the most Beneficent the most Merciful)

I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That, as a member of the Provincial Assembly of \_\_\_\_\_, I will perform my functions honestly to the best of my ability faithfully in accordance

with the Constitution of the Islamic Republic of Pakistan, the law and the rules of the Assembly, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan

That I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan

And that I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

May Allah Almighty help and guide me (A'meen)

#### AUDITOR-GENERAL OF PAKISTAN

[Article 168 (2)]

(In the name of Allah, the most Beneficent, the most Merciful )

I, . . . , do solemnly swear that I will bear true faith and allegiance to Pakistan

That, as Auditor-General of Pakistan, I will discharge my duties and perform my functions honestly, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law and to the best of my knowledge, ability and judgment, without fear or favor, affection or ill-will, and that I will not allow my personal interest to influence my official conduct or my official decisions

May Allah Almighty help and guide me (A'meen)

#### CHIEF JUSTICE OF PAKISTAN OR OF A HIGH COURT OR JUDGE OF THE SUPREME COURT OR A HIGH COURT

[Articles 178 and 194]

(In the name of Allah, the most Beneficent, the most Merciful )

I, . . . , do solemnly swear that I will bear true faith and allegiance to Pakistan.

That, as Chief Justice of Pakistan (or a Judge of the Supreme Court of Pakistan or Chief Justice or a Judge of the High Court for the Province or Provinces of . . . ) I will discharge my duties, and perform my functions, honestly to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law

That I will abide by the code of conduct issued by the Supreme Judicial Council

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan

And that, in all circumstances, I will do right to all manner of people, according to law without fear or favour, affection or ill-will

May Allah Almighty help and guide me (A'meen)

## CHIEF JUSTICE OR JUDGE OF THE FEDERAL SHARIAT COURT

[Article 203C (7)]

(In the name of Allah the most Beneficent, the most Merciful.)

I ..... do solemnly swear that, as the Chief Justice (or a Judge of the Federal Shariat Court, I will discharge my duties, and perform my functions, honestly, to the best of my ability and faithfully in accordance with law;

And that I will not allow my personal interest to influence my official conduct or my official decisions.

May Allah Almighty help and guide me (A'meen).

## CHIEF ELECTION COMMISSIONER

[Article 214]

(In the name of Allah, the most Beneficent, the most Merciful.)

I, ..... do solemnly swear that as Chief Election Commissioner I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and without fear or favor, affection or ill-will, and that I will not allow my personal interest to influence my official conduct or my official decisions.

May Allah Almighty help and guide me (A'meen).

## MEMBERS OF THE ARMED FORCES

[Article 244]

(In the name of Allah, the most Beneficent, the most Merciful.)

I ..... do solemnly swear that I will bear true faith and allegiance to Pakistan and uphold the Constitution of the Islamic Republic of Pakistan which embodies the will of the people, that I will not engage myself in any political activities whatsoever and that I will honestly and faithfully serve Pakistan in the Pakistan Army (or Navy or Air Force) as required by and under the law.

May Allah Almighty help and guide me (A'meen).

**FOURTH SCHEDULE**

[Article 70(4)]

**FEDERAL LEGISLATIVE LIST****PART I**

1 The defence of the Federation or any part thereof in peace or war, the military, naval and air forces of the Federation and any other armed forces raised or maintained by the Federation, any armed forces which are not forces of the Federation but are attached to or operating with any of the Armed Forces of the Federation including civil armed forces, Federal Intelligence Bureau; preventive detention for reasons of State connected with defence, external affairs, or the security of Pakistan or any part thereof, person subjected to such detention, industries declared by Federal law to be necessary for the purpose of defence or for the prosecution of war

2 Military, naval and air force works, local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas, and the delimitation of such areas

3 External affairs, the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries, extradition, including the surrender of criminals and accused persons to Governments outside Pakistan

4 Nationality, citizenship and naturalization

5 Migration from or into, or settlement in, a Province or the Federal Capital

6 Admission into, and emigration and expulsion from, Pakistan including in relation thereto the regulation of the movements in Pakistan of persons not domiciled in Pakistan, pilgrimages to places beyond Pakistan

7 Posts and telegraphs, including telephones, wireless, broadcasting and other like forms of communications, Post Office Saving Bank

8 Currency, coinage and legal tender

9 Foreign exchange, cheques, bills of exchange, promissory notes and other like instruments

10 Public debt of the Federation, including the borrowing of money on the security of the Federal Consolidated Fund, foreign loans and foreign aid

11 Federal Public Services and Federal Public Service Commission

12 Federal pensions, that is to say, pensions payable by the Federation or out of the Federal Consolidated Fund

13 Federal Ombudsmen

14 Administrative Courts and Tribunals for Federal subjects

15 Libraries, museums, and similar institutions controlled or financed by the Federation

16 Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

17 Education as respects Pakistani students in foreign countries and foreign students in Pakistan

18 Nuclear energy, including—

(a) mineral resources necessary for the generation of nuclear energy,

(b) the production of nuclear fuels and the generation and use of nuclear energy, and

(c) ionizing radiations

19 Port quarantine, seamen's and marine hospitals and hospitals connected with port quarantine.

20 Maritime shipping and navigation, including shipping and navigation on tidal waters, Admiralty jurisdiction

21 Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein

22 Aircraft and air navigation, the provision of aerodromes, regulation and organization of air traffic and of aerodromes

23 Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft

24 Carriage of passengers and goods by sea or by air

25 Copyright, inventions, designs, trademarks and merchandise marks

26 Opium so far as regards sale for export

27 Import and export across customs frontiers as deemed by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries, standard of quality of goods to be exported out of Pakistan

28 State Bank of Pakistan, banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Province and carrying on business only within that Province

29 The law of insurance, except as respects insurance undertaken by a Province, and the regulation of the conduct of insurance business, except as respects business undertaken by a Province, Government insurance, except so far as undertaken by a Province by virtue of any matter within the legislative competence of the Provincial Assembly

30 Stock exchanges and future markets with objects and business not confined to one Province

31 Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities

32 National planning and national economic coordination including planning and coordination of scientific and technological research

33 State lotteries

34 National highways and strategic roads

35 Federal surveys including geological surveys and Federal meteorological organizations

36 Fishing and fisheries beyond territorial waters

37 Works, lands and buildings vested in, or in the possession of Government for the purposes of the Federation (not being military, naval or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides

38 Census

39 Establishment of standards of weights and measures

40 Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in another Province without the consent of the Government of that Province, extension of the powers and jurisdiction of members of a police force belonging to any Province to railway areas outside that Province

41 Elections to the office of President, to the National Assembly, the Senate and the Provincial Assemblies, Chief Election Commissioner and Election Commissions

42 The salaries, allowances and privileges of the President, Speaker and Deputy Speaker of the National Assembly, Chairman and Deputy Chairman of the Senate, Prime Minister, Federal Minister, Ministers of State, the salaries, allowances and privileges of the members of the Senate and the National Assembly, and the punishment of persons who refuse to give evidence or produce documents before committees thereof

43 Duties of customs, including export duties.

44 Duties of excise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics

45 Duties in respect of succession to property

46 Estate duty in respect of property

47 Taxes on income other than agricultural income,

48 Taxes on corporations

49 Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed

50 Taxes on the capital value of the assets, not including taxes on capital gains on immovable property

51 Taxes on mineral oil, natural gas and minerals for use in generation of nuclear energy

52 Taxes and duties on the production capacity of any plant, machinery, or undertaking establishment or installation in lieu of any one or more of them

53 Terminal taxes on goods or passengers carried by railway, sea or air, taxes on their fares and freights.

54 Fees in respect of any of the matters in this Part, but not including fees taken in any court

55 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by or under the Constitution, the enlargement of the jurisdiction of the Supreme Court, and the conferring thereon of supplemental powers

56. Offences against laws with respect to any of the matters in this Part

57. Inquiries and statistics for the purposes of any of the matters in this Part

58 Matters which under the Constitution are within the legislative competence of Majlis-e-Shoora (Parliament) or relate to the Federation

59 Matters incidental or ancillary to any matter enumerated in this Part

## PART II

1 Railways

2 Mineral oil and natural gas, liquids and substances declared by Federal law to be dangerously inflammable

3 Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest, institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation, all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation

4 Council of Common Interests

5. Fees in respect of any of the matters in this Part but not including fees taken in any court

6. Offences against laws with respect to any of the matters in this Part

7 Inquiries and statistics for the purposes of any of the matters in this Part

8. Matters incidental or ancillary to any matter enumerated in this Part

### Concurrent Legislative List

1 Criminal law, including all matters included in the Pakistan Penal Code on the commencing day, but excluding offences against laws with respect to any of the matters specified in the Federal Legislative List and excluding the use of naval, military and air forces in aid of civil power

2. Criminal procedure, including all matters included in the Code of Criminal Procedure, on the commencing day

3 Civil procedure, including the law of limitation and all matters included in the Code of Civil Procedure on the commencing day, the recovery in a Province or the Federal Capital of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

4 Evidence and oath, recognition of laws, public acts and records of judicial proceedings

5 Marriage and divorce, infants and minors, adoption.

6 Wills, intestacy and succession, save as regards agricultural land

7 Bankruptcy and insolvency, administrators-general and official trustees

8 Arbitration

9 Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land

10 Trusts and trustees

11 Transfer of property other than agriculture land, registration of deeds and documents

12 Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in the Federal Legislative List

13 Removal of prisoners and accused persons from one Province to another Province

14 Preventive detention for reasons connected with the maintenance of public order, or the maintenance of supplies and services essential to the community, persons subjected to such detention

15 Persons subjected to preventive detention under Federal authority

16 Measures to combat certain offences committed in connection with matters concerning the Federal and Provincial Governments and the establishment of a police force for that purpose

17 Arms, firearms and ammunition

18 Explosives

19 Opium, so far as regards cultivation and manufacture

20 Drugs and medicines

21 Poisons and dangerous drugs

22 Prevention of the extension from one Province to another of infectious or contagious diseases or pests affecting men, animals or plants

23 Mental illness and mental retardation, including places for the reception or treatment of the mentally ill and mentally retarded

24 Environmental pollution and ecology.

25 Population planning and social welfare

26 Welfare of labour, conditions of labour, provident funds, employer's liability and workmen's compensation, health insurance including invalidity pension and old age pensions

- 27 Trade unions, industrial and labour disputes
28. The setting up and carrying on of labour exchanges, employment information bureaux and training establishments
- 29 Boilers
- 30 Regulation of labour and safety in mines, factories and oil-fields
31. Unemployment insurance.
- 32 Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, carriage of passengers and goods on inland waterways
- 33 Mechanically propelled vehicles
- 34 Electricity
- 35 Newspapers, books and printing presses
- 36 Evacuee property
37. Ancient and historical monuments, archaeological sites and remains
- 38 Curriculum, syllabus, planning, policy, centres of excellence and standards of education
- 39 Islamic education
- 40 Zakat
- 41 Production, censorship and exhibition of cinematograph films
- 42 Tourism.
- 43 Legal medical and other professions
- 43A. Auqaf
- 44 Fees in respect of any of the matters in this List, but not including fees taken in any court
- 45 Inquiries and statistics for the purpose of any of the matters in this List
- 46 Offences against laws with respect to any of the matters in this List, jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List
- 47 Matters incidental or ancillary to any matter enumerated in this List

**FIFTH SCHEDULE**

[Article 205]

**Remuneration and Terms and Conditions of Service of Judges****The Supreme Court**

1. There shall be paid to the Chief Justice of Pakistan a salary of Rs 7,900 per mensem, and to every other Judge of the Supreme Court a salary of Rs 7,400 per mensem

2 Every Judge of the Supreme Court shall be entitled to such privileges and allowances, and to such rights in respect of leave of absence and pension, as may be determined by the President, and until so determined, to the privileges, allowances and rights to which, immediately before the commencing day, the Judges of the Supreme Court of Pakistan were entitled

3 The pension payable to a retired Judge of the Supreme Court shall not be less than Rs 3,600 per mensem or more than Rs 4,600 per mensem, depending on the length of his service as Judge in that Court or a High Court

Provided that pension payable to a Judge of Supreme Court shall not be less favorable than that payable to him as such Judge, immediately before the commencing day

4 The widow of a Judge of the Supreme Court shall be entitled to a pension at the following rates, namely —

(a) if the Judge dies after retirement 50 per cent of the net pension payable to him, or

(b) if the Judge dies after having rendered not less than three year's service as Judge and while still serving as such 50 per cent of the pension admissible to him at the minimum rate

5 The pension shall be payable to the widow for life or, if she remarries, until her marriage

6 If the widow dies, the pension shall be payable—

(a) to the sons of the Judge who are less than twenty-one years of age, until they attain that age, and

(b) to the unmarried daughters of the Judge who are less than twenty-one years of age, until they attain that age or are married, whichever first occurs

**The High Court**

1 There shall be paid to the Chief Justice of a High Court a salary of Rs 7,200 per mensem and to every other Judge of a High Court a salary of Rs 6,500 per mensem

2 Every Judge of a High Court shall be entitled to such privileges and allowances, and to such rights in respect of leave of absence and pension, as may be determined by the President, and until so determined, to the privileges, allowances and rights, to which, immediately before the commencing day, the Judges of the High Court were entitled

3. The pension payable to a Judge of a High Court who retires after having put in not less than five years service as Judge shall not be less than Rs. 2,400 per mensem or more than Rs. 4,200 per mensem, depending on the length of his service as Judge and total service, if any, in the service of Pakistan.

4. The widow of a Judge of the High Court shall be entitled to a pension at the following rates, namely—

(a) if the Judge dies after retirement 50 per cent of the net pension payable to him; or

(b) if the Judge dies after having rendered not less than five years service as Judge and while still serving as such 50 per cent of the pension admissible to him at the minimum rate.

5. The pension shall be payable to the widow for life, or if she remarries, until her marriage.

6. If the widow dies, the pension shall be payable—

(a) to the sons of the Judge who are less than twenty-one years of age until they attain that age; and

(b) to the unmarried daughters of the Judge who are less than twenty-one years of age until they attain that age or are married, whichever first occurs.

**SIXTH SCHEDULE**

[Article 268 (2)]

**Laws not to be Altered, Repealed or Amended without the Previous Sanction of the President**

- 1 The Improper Acquisition of Property Regulation, 1969
- 2 The Removal from Service (Special Provisions) Regulation, 1969
- 3 The Living Beyond Ostensible Means (Punishment) Regulation, 1969
- 4 The Government Agricultural Land (Recovery of Illegal Possession) Regulation, 1969
- 5 The Enemy Property (Payment of Money Due to Enemy) Regulation, 1970
- 6 The Withdrawal of Currency Notes (High Denomination) Regulation, 1971
- 7 The Price of Evacuee Property and Public Dues (Recovery) Regulation, 1971
- 8 The Peshawar District and Tribal Areas (Settlement of Disputes) Regulation, 1971
- 9 The Convention Muslim League and Awami League (Scrutiny of Funds) Regulation, 1971
- 10 The Foreign Exchange Repatriation Regulation, 1972
- 11 The Foreign Assets (Declaration) Regulation, 1972
- 12 The Removal from Service (Special Provisions) Regulation, 1972
- 13 The Land Reforms Regulation, 1972
- 14 The Removal from Service (Review Petition) Regulation, 1972
- 15 The Land Reforms (Baluchistan Part Feeder Canal) Regulation, 1972
- 16 The Privately Managed Schools and Colleges (Taking Over) Regulation, 1972
- 17 The Enemy Property (Revocation of Sales) Regulation, 1972
- 18 The Dir and Swat (Devolution and Distribution of Property) Regulation, 1972
- 19 The Dir and Swat (Settlement of Disputes of Immovable Property) Regulation, 1972
- 20 The West Pakistan Industrial Development Corporation (Revision of Sales or Transfer) Regulation, 1972
- 21 The Economic Reforms (Protection of Industries) Regulation, 1972
- 22 The National Press Trust (Suspension of Board of Trustees and Directors) Regulation, 1972
- 23 The Cooperative Banks (Repayment of Loans) (Punjab) Regulation, 1972
- 24 The Cooperative Societies (Repayment of Loans) (Sind) Regulation, 1972

**SEVENTH SCHEDULE**

[Article 270-A(6)]

**Laws to be amended in the manner  
provided for amendment of the Constitution**

**Presidents Orders**

- 1 Zulfiqar Ali Bhutto Trust and Peoples Foundation Trust (Renaming and Administration) Order, 1978 (P O No 4 of 1978)
- 2 The Cantonments (Urban Immovable Property Tax and Entertainment Duty) Order, 1979 (P O No 13 of 1979)
- 3 The Pakistan Defence Officers Housing Authority Order, 1980 (P O No 7 of 1980)
- 4 The Foreign Currency Loans (Rate of Exchange) Order, 1982 (P O No 3 of 1982)
- 5 The Establishment of the office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P O No 1 of 1983)
- 6 The Aga Khan University Order, 1983 (P O No 3 of 1983)
- 7 The National College of Textile Engineering (Governing Body and Cess) Order, 1983 (P O No 11 of 1983)
- 8 The Lahore University of Management Sciences Order, 1985 (P O No 25 of 1985)

**Ordinances**

- 1 The International Islamic University Ordinance, 1985 (XXX of 1985)
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CONSTITUTION  
OF  
COMMONWEALTH OF PUERTO RICO

PREAMBLE

We, the people of Puerto Rico, in order to organize ourselves politically on a fully democratic basis, to promote the general welfare, and to secure for ourselves and our posterity the complete enjoyment of human rights, placing our trust in Almighty God, do ordain and establish this Constitution for the commonwealth which, in the exercise of our natural rights, we now create within our union with the United States of America

In so doing, we declare

The democratic system is fundamental to the life of the Puerto Rican community,

We understand that the democratic system of Government is one in which the will of the people is the source of public power, the political order is subordinate to the rights of man, and the free participation of the citizen in collective decisions is assured. We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges, our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere, our fervor for education, our faith in justice, our devotion to the courageous, industrious, and peaceful way of life, our fidelity to individual human values above and beyond social position, racial differences and economic interests, and our hope for a better world based on these principles

## ARTICLE I

### THE COMMONWEALTH

1. The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.

2. The Government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico.

3. The political authority of the Commonwealth of Puerto Rico shall extend to the Island of Puerto Rico and to the adjacent islands within its jurisdiction.

4. The seat of the Government shall be the city of San Juan.

## ARTICLE II

### BILL OF RIGHTS

1. The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality.

2. The laws shall guarantee the expression of the will of the people by means of equal, direct and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the electoral franchise.

3. No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. There shall be complete separation of Church and State.

4. No law shall be made abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

5. Every person has the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free, and shall be compulsory in the elementary schools to the extent permitted by the facilities of the State. No public property or public funds shall be used for the support of schools or educational institutions other than those of the State. Nothing contained in this provision shall prevent the State from furnishing to any child non-educational services established by law for the protection or welfare of children.

6. Persons may join with each other and organize freely for any lawful purpose, except in military or quasi-military organizations

7. The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

8. Every person has the right to the protection of law against abusive attacks on his honour, reputation and private or family life.

9. Private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law. No law shall be enacted authorizing condemnation of printing presses, machinery or material devoted to publications of any kind. The buildings in which these objects are located may be condemned only after a judicial finding of public convenience and necessity pursuant to procedure that shall be provided by law, and may be taken before such a judicial finding only when there is placed at the disposition of the publication and adequate site in which it can be installed and continue to operate for a reasonable time.

10. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized.

Evidence obtained in violation of this section shall be inadmissible in the courts.

11. In all criminal prosecutions, the accused shall enjoy the right to have a speedy and public trial, to be informed of the nature and cause of the accusation and to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, to have assistance of counsel, and to be presumed innocent.

In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine.

No person shall be compelled in any criminal case to be a witness against himself and the failure of the accused to testify may be neither taken into consideration nor commented upon against him.

No person shall be twice put in jeopardy of punishment for the same offense.

Before conviction every accused shall be entitled to be admitted to bail. Incarceration prior to trial shall not exceed six months nor shall bail or fines be excessive. No person shall be imprisoned for debt.

12. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted. Cruel and unusual punishments shall not be inflicted. Suspension of civil rights including the right to vote shall cease upon service of the term of imprisonment imposed.

No ex post facto law or bill of attainder shall be passed.

13. The writ of habeas corpus shall be granted without delay and free of costs. The privilege of the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of rebellion, insurrection or invasion. Only the Legislative Assembly shall have the power to suspend the privilege of the writ of habeas corpus and the laws regulating its issuance.

The military authority shall always be subordinate to civil authority.

14. No titles of nobility or other hereditary honours shall be granted. No officer or employee of the Commonwealth shall accept gifts, donations, decorations or offices from any foreign country or officer without prior authorization by the Legislative Assembly.

15. The employment of children less than fourteen years of age in any occupation which is prejudicial to their health or morals or which places them in jeopardy of life or limb is prohibited.

No child less than sixteen years of age shall be kept in custody in a jail or penitentiary.

16. The right of every employee to choose his occupation freely and to resign therefrom is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary workday which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed.

17. Persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the Government operating as private businesses or enterprises, shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare.

18. In order to assure their right to organize and to bargain collectively, persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, in their direct relations with their own employers shall have the right to strike, to picket and to engage in other legal concerted activities.

Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.

19. The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not

specifically mentioned which belong to the people in a democracy. The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively.

20. The Commonwealth also recognizes the existence of the following human rights

The right of every person to receive free elementary and secondary education

The right of every person to obtain work

The right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing and medical care and necessary social services

The right of every person to social protection in the event of unemployment, sickness, old age or disability

The right of motherhood and childhood to special care and assistance

The rights set forth in this section are closely connected with the progressive development of the economy of the Commonwealth and require, for their full effectiveness, sufficient resources and an agricultural and industrial development not yet attained by the Puerto Rican community

In the light of their duty to achieve the full liberty of the citizen, the people and the government of Puerto Rico shall do everything in their power to promote the greatest possible expansion of the system of production to assure the fairest distribution of economic output, and to obtain the maximum understanding between individual initiative and collective cooperation. The executive and judicial branches shall bear in mind this duty and shall construe the laws that tend to fulfill it in the most favorable manner possible.

### ARTICLE III

#### THE LEGISLATURE

1. The legislative power shall be vested in a Legislative Assembly, which shall consist of two houses, the Senate and the House of Representatives, whose members shall be elected by direct vote at each general election

2. The Senate shall be composed of twenty-seven Senators and the House of Representatives of fifty-one Representatives, except as these numbers may be increased in accordance with the provisions of section 7 of this Article.

3. For the purpose of election of members of the Legislative Assembly, Puerto Rico shall be divided into eight senatorial districts and forty representative districts. Each senatorial district shall elect two Senators and each representative district one Representative

There shall also be Senators and eleven Representatives elected at large. No elector may vote for more than one candidate for Senator at Large or for more than one candidate for Representative at Large

4. In the first and subsequent elections under this Constitution the division of senatorial and representative districts as provided in Article VIII

shall be in effect. After each decennial census beginning with the year 1960, said division shall be revised by a Board composed of the Chief Justice of the Supreme Court as Chairman and of two additional members appointed by the Governor with the advice and consent of the Senate. The two additional members shall not belong to the same political party. Any revision shall maintain the number of senatorial and representative districts here created, which shall be composed of contiguous and compact territory and shall be organized, insofar as practicable, upon the basis of population and means of communication. Each senatorial district shall always include five representative districts.

The decisions of the Board shall be made by majority vote and shall take effect in the general elections next following each revision. The Board shall cease to exist after the completion of each revision.

5. No person shall be a member of the Legislative Assembly unless he is able to read and write the Spanish or English language and unless he is a citizen of the United States and of Puerto Rico and has resided in Puerto Rico at least two years immediately prior to the date of his election or appointment. No person shall be a member of the Senate who is not over thirty years of age, and no person shall be a member of the House of Representatives who is not over twenty-five years of age.

6. No person shall be eligible to election or appointment as Senator or Representative for a district unless he has resided therein at least one year immediately prior to his election or appointment. When there is more than one representative district in a municipality, residence in the municipality shall satisfy this requirement.

7. If in a general election more than two-thirds of the members of either house are elected from one political party or from a single ticket, as both are defined by law, the number of members shall be increased in the following cases:

If the party or ticket which elected more than two-thirds of the members of either or both houses shall have obtained less than two-thirds of the total number of votes cast for the office of Governor, the number of members of the Senate or of the House of Representatives or of both bodies, whichever may be the case, shall be increased by declaring elected a sufficient number of candidates of the minority party or parties to bring the total number of members of the minority party or parties to nine in the Senate and to seventeen in the House of Representatives. When there is more than one minority party, said additional members shall be declared elected from among the candidates of each minority party in the proportion that the number of votes cast for the candidate of each of said parties for the office of Governor bears to the total number of votes cast for the candidates of all the minority parties for the office of Governor.

When one or more minority parties shall have obtained representation in a proportion equal to or greater than the proportion of votes received by their respective candidates for Governor, such party or parties shall not be entitled

to additional members until the representation established for each of the other minority parties under these provisions shall have been completed

If the party or ticket which elected more than two-thirds of the members of either or both houses shall have obtained more than two-thirds of the total number of votes cast for the office of Governor, and one or more minority parties shall not have elected the number of members in the Senate or in the House of Representatives or in both houses, whichever may be the case, which corresponds to the proportion of votes cast by each of them for the office of Governor, such additional number of their candidates shall be declared elected as is necessary in order to complete said proportion as nearly as possible, but the number of Senators of all the minority parties shall never, under this provision, be more than nine or that of Representatives more than seventeen

In order to select additional members of the Legislative Assembly from a minority party in accordance with these provisions, its candidates at large who have not been elected shall be the first to be declared elected in the order of the votes that they have obtained, and thereafter its district candidates who, not having been elected, have obtained in their respective districts the highest proportion of the total number of votes cast as compared to the proportion of votes cast in favor of other candidates of the same party not elected to an equal office in the other districts

The additional Senators and Representatives whose election is declared under this section shall be considered for all purposes as Senators at Large or Representatives at Large

The measures necessary to implement these guarantees, the method of adjudicating fractions that may result from the application of the rules contained in this section, and the minimum number of votes that a minority party must cast in favor of its candidate for Governor in order to have the right to the representation provided herein shall be determined by the Legislative Assembly

8. The term of office of Senators and Representative shall begin on the second day of January immediately following the date of the general election in which they shall have been elected. If, prior to the fifteen months immediately preceding the date of the next general election, a vacancy occurs in the office of Senator or Representative for a district, the Governor shall call a special election in said district within thirty days following the date on which the vacancy occurs. This election shall be held not later than ninety days after the call, and the person elected shall hold once for the rest of the unexpired term of his predecessor. When said vacancy occurs during a legislative session, or when the Legislative Assembly or the Senate has been called for a date prior to the certification of the results of the special election, the presiding officer of the appropriate house shall fill said vacancy by appointing the person recommended by the central committee of the political party of which his predecessor in office was a member. Such person shall hold the office until certification of the election of the candidate who was elected. When the

vacancy occurs within fifteen months prior to a general election, or when it occurs in the office of a Senator at Large or a Representative at Large, the presiding officer of the appropriate house shall fill it, upon the recommendation of the political party of which the previous holder of the office was a member, by appointing a person selected in the same manner as that in which his predecessor was selected. A vacancy in the office of a Senator at Large or a Representative at Large elected as an independent candidate shall be filled by an election in all districts.

9. Each House shall be the sole judge of the election, returns and qualifications of its members, shall choose its own officers, shall adopt rules for its own proceedings appropriate to legislative bodies, and, with the concurrence of three-fourths of the total number of members of which it is composed, may expel any member for the causes established in section 21 of this Article, authorizing impeachments. The Senate shall elect a President and the House of Representatives a Speaker from among their respective members.

10. The Legislative Assembly shall be deemed a continuous body during the term for which its members are elected and shall meet in regular session each year commencing on the second Monday in January. The duration of regular sessions and the periods of time for introduction and consideration of Bills shall be prescribed by law. When the Governor calls the Legislative Assembly into special session it may consider only those matters specified in the call or in any special message sent to it by him during the session. No special session shall continue longer than twenty calendar days.

11. The sessions of each House shall be open.

12. A majority of the total number of members of which each House is composed shall constitute a quorum, but a smaller number may adjourn from day to day and shall have authority to compel the attendance of absent members.

13. The two Houses shall meet in the Capitol of Puerto Rico and neither of them may adjourn for more than three consecutive days without the consent of the other.

14. No member of the Legislative Assembly shall be arrested while the House of which he is a member is in session, or during the fifteen days before or after such session, except for treason, felony or breach of the peace. The members of the Legislative Assembly shall not be questioned in any other place for any speech, debate or vote in either House or in any Committee.

15. No Senator or Representative may, during the term for which he was elected or chosen, be appointed to any civil office in the Government of Puerto Rico, its municipalities or instrumentalities, which shall have been created or the salary of which shall have been increased during said term. No person may hold office in the Government of Puerto Rico, its municipalities or instrumentalities and be a Senator or Representative at the same time. These provisions shall not prevent a member of the Legislative Assembly from being designated to perform functions *ad honorem*.

16 The Legislative Assembly shall have the power to create, consolidate or reorganize executive departments and to define their functions

17. No Bill shall become a law unless it has been printed, read, referred to a Committee and returned therefrom with a written report, but either House may discharge a committee from the study and report of any Bill and proceed to the consideration thereof Each House shall keep a journal of its proceedings and of the votes cast for and against Bills The legislative proceedings shall be published in a daily record in the form determined by law Every Bill, except general appropriation Bills, shall be confined to one subject, which shall be clearly expressed in its title, and any part of an Act whose subject has not been expressed in the title shall be void The general Appropriation Act shall contain only appropriations and rules for their disbursement No Bill shall be amended in a manner that changes its original purpose or incorporates matters extraneous to it In amending any Article or section of a law, said Article or section shall be promulgated in its entirety as amended All Bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other Bills

18. The subjects which may be dealt with by means of joint resolution shall be determined by law, but every joint resolution shall follow the same legislative process as that of a Bill

19. Every Bill which is approved by a majority of the total number of members of which each House is composed shall be submitted to the Governor and shall become law if he signs it or if he does not return it, with his objections, to the House in which it originated within ten days (Sundays excepted) counting from the date on which he shall have received it

When the Governor returns a Bill, the House that receives it shall enter his objections on its journal and both Houses may reconsider it If approved by two-thirds of the total number of members of which each House is composed, the Bill shall become law

If the Legislative Assembly adjourns *sine die* before the Governor has acted on a Bill that has been presented to him less than ten days before, he is relieved of the obligation of returning it with his objections and the Bill shall become law only if the Governor signs it within thirty days after receiving it

Every final passage or reconsideration of a Bill by each House shall be by a roll-call vote

20. In approving any appropriation Bill that contains more than one item the Governor may eliminate one or more of such items or reduce their amounts, at the same time reducing the total amounts involved

21. The House of Representatives shall have exclusive power to initiate impeachment proceedings and with the concurrence of two-thirds of the total number of members of which it is composed, to bring an indictment The Senate shall have exclusive power to try and to decide impeachment cases, and in meeting for such purposes the Senators shall act in the name of the people and under oath or affirmation No judgment of conviction in an

impeachment trial shall be pronounced without the concurrence of three-fourths of the total number of members of which the Senate is composed, and the judgment shall be limited to removal from office. The person impeached, however, may be liable and subject to indictment, trial, judgment and punishment according to law. The causes of impeachment shall be treason, bribery, other felonies, and misdemeanors involving moral turpitude. The Chief Justice of the Supreme Court shall preside at the impeachment trial of the Governor.

The two Houses may conduct impeachment proceedings in their regular or special sessions. The presiding officers of the two Houses, upon written request of two-thirds of the total number of members of which the House of Representatives is composed, must convene them to deal with such proceedings.

22. The Governor shall appoint a Controller with the advice and consent of a majority of the total number of members of which each House is composed. The Controller shall meet the requirements prescribed by law and shall hold office for a term of ten years and until his successor has been appointed and qualifies. The Controller shall audit all the revenues, accounts and expenditures of the Commonwealth, of its agencies and instrumentalities and of its municipalities, in order to determine whether they have been made in accordance with law. He shall render annual reports and any special reports that may be required of him by the Legislative Assembly or by the Governor.

In the performance of his duties the Controller shall be authorized to administer oaths, take evidence and compel, under pain of contempt, the attendance of witnesses and the production of books, letters, documents, papers, records and all other Articles deemed essential to a full understanding of the matter under investigation.

The Controller may be removed for the causes and pursuant to the procedure established in the preceding section.

#### ARTICLE IV

#### THE EXECUTIVE

1. The executive power shall be vested in a Governor, who shall be elected by direct vote in each general election.

2. The Governor shall hold office for the term of four years from the second day of January of the year following his election and until his successor has been elected and qualifies. He shall reside in Puerto Rico and maintain his office in its capital city.

3. No person shall be Governor unless, on the date of the election, he is at least thirty-five years of age, and is and has been during the preceding five years a citizen of the United States and a citizen and bona fide resident of Puerto Rico.

4. The Governor shall execute the laws and cause them to be executed.

He shall call the Legislative Assembly or the Senate into special session when in his judgment the public interest so requires

He shall appoint, in the manner prescribed by this Constitution or by law, all officers whose appointment he is authorized to make. He shall have the power to make appointments while the Legislative Assembly is not in session. Any such appointments that require the advice and consent of the Senate or of both Houses shall expire at the end of the next regular session

He shall be the Commander-in-Chief of the militia

He shall have the power to call out the militia and summon the posse comitatus in order to prevent or suppress rebellion, invasion or any serious disturbance of the public peace

He shall have the power to proclaim martial law when the public safety requires it in case of rebellion or invasion or imminent danger thereof. The Legislative Assembly shall meet forthwith on their own initiative to ratify or revoke the proclamation

He shall have the power to suspend the execution of sentences in criminal cases and to grant pardons, commutations of punishment, and total or partial remissions of fines and forfeitures for crimes committed in violation of the laws of Puerto Rico. This power shall not extend to cases of impeachment

He shall approve or disapprove in accordance with this Constitution the joint resolutions and Bills passed by the Legislative Assembly.

He shall present to the Legislative Assembly, at the beginning of each regular session, a message concerning the affairs of the Commonwealth and a report concerning the state of the Treasury of Puerto Rico and the proposed expenditures for the ensuing fiscal year. Said report shall contain the information necessary for the formulation of a program of legislation

He shall exercise the other powers and functions and discharge the other duties assigned to him by this Constitution or by law

5. For the purpose of exercising executive power, the Governor shall be assisted by Secretaries whom he shall appoint with advice and consent of the Senate. The appointment of the Secretary of State shall in addition require the advice and consent of the House of Representatives and the person appointed shall fulfill the requirements established in section 3 of this Article. The Secretaries shall collectively constitute the Governor's advisory council, which shall be designated as the Council of Secretaries

6. Without prejudice to the power of the Legislative Assembly to create, reorganize and consolidate executive departments and to define their functions, the following departments are hereby established: State, Justice, Education, Health, Treasury, Labour, Agriculture and Commerce, and Public Works. Each of these executive departments shall be headed by a Secretary

7. When a vacancy occurs in the office of Governor, caused by death, resignation, removal, total and permanent incapacity, or any other absolute disability, said office shall devolve upon the Secretary of State, who shall hold

it for the rest of the term until a new Governor has been elected and qualifies. In the event that vacancies exist at the same time in both the office of Governor and that of Secretary of State, the law shall provide which of the Secretaries shall serve as Governor.

8. When for any reason the Governor is temporarily unable to perform his functions, the Secretary of State shall substitute for him during the period he is unable to serve. If for any reason the Secretary of State is not available, the Secretary determined by law shall temporarily hold the office of Governor.

9. If the Governor-elect shall not have qualified, or if he has qualified and a permanent vacancy occurs in the office of Governor before he shall have appointed a Secretary of State, or before said Secretary, having been appointed, shall have qualified, the Legislative Assembly just elected, upon convening for its first regular session, shall elect, by a majority of the total number of members of which each House is composed, a Governor who shall hold office until his successor is elected in the next general election and qualifies.

10. The Governor may be removed for the causes and pursuant to the procedure established in section 21 of Article III of this Constitution.

## ARTICLE V THE JUDICIARY

1. The judicial power of Puerto Rico shall be vested in a Supreme Court, and in such other courts as may be established by law.

2. The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration. The Legislative Assembly may create and abolish courts, except for the Supreme Court, in a manner not inconsistent with this Constitution, and shall determine the venue and organization of the courts.

3. The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by law upon request of the Supreme Court.

4. The Supreme Court shall sit, in accordance with rules adopted by it, as a full Court or in divisions. All the decisions of the Supreme Court shall be concurred in by a majority of its members. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.

5. The Supreme Court shall, or any of its divisions, or any of its Justices may hear in the first instance petitions for habeas corpus and any other causes and proceedings as determined by law.

6. The Supreme Court shall adopt for the courts rules of evidence and of civil and criminal procedure which shall not abridge, enlarge or modify the substantive rights of the parties. The rules thus adopted shall be submitted to the Legislative Assembly at the beginning of its next regular session and shall not go into effect until sixty days after the close of said session unless

disapproved by the Legislative Assembly, which shall have the power both at said session and subsequently to amend, repeal or supplement any of said rules by a specific law to that effect

7. The Supreme Court shall adopt rules for the administration of the courts. These rules shall be subject to the laws concerning procurement, personnel, audit and appropriation of funds, and other laws which apply generally to all branches of the Government. The Chief Justice shall direct the administration of the courts and shall appoint an administrative director who shall hold office at the will of the Chief Justice

8. Judges shall be appointed by the Governor with the advice and consent of the Senate. Justices of the Supreme Court shall not assume office until after confirmation by the Senate and shall hold their offices during good behavior. The terms of office of the other judges shall be fixed by law and shall not be less than that fixed for the term of once of a judge of the same or equivalent category existing when this Constitution takes effect. The other officials and employees of the courts shall be appointed in the manner provided by law

9. No person shall be appointed a Justice of the Supreme Court unless he is a citizen of the United States and of Puerto Rico, shall have been admitted to the practice of law in Puerto Rico at least ten years prior to his appointment, and shall have resided in Puerto Rico at least five years immediately prior thereto

10. The Legislative Assembly shall establish a retirement system for Judges. Retirement shall be compulsory at the age of seventy years

11. Justices of the Supreme Court may be removed for the causes and pursuant to the procedure established in section 21 of Article III of this Constitution. Judges of the other courts may be removed by the Supreme Court for the causes and pursuant to the procedure provided by law

12. No Judge shall make a direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for an elective public office unless he has resigned his judicial office at least six months prior to his nomination

13. In the event that a court or any of its divisions or sections is changed or abolished by law, the person holding a post of Judge therein shall continue to hold it during the rest of the term for which he was appointed and shall perform the judicial functions assigned to him by the Chief Justice of the Supreme Court

## ARTICLE VI

### GENERAL PROVISIONS

1. The Legislative Assembly shall have the power to create, abolish, to reorganize and reorganize municipalities, to change their territorial limits, to determine their organization and functions, and to authorize them to develop

programs for the general welfare and to create any agencies necessary for that purpose

No law abolishing or consolidating municipalities shall take effect until ratified in a referendum by a majority of the qualified electors voting in said referendum in each of the municipalities to be abolished or consolidated. The referendum shall be conducted in the manner determined by law, which shall include the applicable procedures of the election laws in effect when the referendum law is approved.

2. The power of the Commonwealth of Puerto Rico to impose and collect taxes and to authorize their imposition and collection by municipalities shall be exercised as determined by the Legislative Assembly and shall never be surrendered or suspended. The power of the Commonwealth of Puerto Rico to contract and to authorize the contracting of debts shall be exercised as determined by the Legislative Assembly.

3. The rule of taxation in Puerto Rico shall be uniform.

4. General elections shall be held every four years on the day of November determined by the Legislative Assembly. In said elections there shall be elected a Governor, the members of the Legislative Assembly, and the other officials whose election on that date is provided for by law.

Every person over twenty-one years of age shall be entitled to vote if he fulfills the other conditions determined by law. No person shall be deprived of the right to vote because he does not know how to read or write or does not own property.

All matters concerning the electoral process, registration of voters, political parties and candidates shall be determined by law.

Every popularly elected official shall be elected by direct vote and any candidate who receives more votes than any other candidate for the same office shall be declared elected.

5. The laws shall be promulgated in accordance with the procedure prescribed by law and shall specify the terms under which they shall take effect.

6. If at the end of any fiscal year the appropriations necessary for the ordinary operating expenses of the Government and for the payment of interest on and amortization of the public debt for the ensuing fiscal year shall not have been made, the several sums appropriated in the last Appropriation Acts for the objects and purposes therein specified, so far as the same may be applicable, shall continue in effect item by item, and the Governor shall authorize the payments necessary for such purposes until corresponding appropriations are made.

7. The appropriations made for any fiscal year shall not exceed the total revenues, including available surplus, estimated for said fiscal year unless the imposition of taxes sufficient to cover said appropriations is provided by law.

8. In case the available revenues including surplus for any fiscal year are insufficient to meet the appropriations made for that year, interest on the public debt and amortization thereof shall first be paid, and other

Article 6]

disbursements shall thereafter be made in accordance with the order of priorities established by law

9. Public property and funds shall only be disposed of for public purposes, for the support and operation of State institutions, and pursuant to law

10 No law shall give extra compensation to any public officer, employee, agent or contractor after services shall have been rendered or contract made No law shall extend the term of any public officer or diminish his salary or emoluments after his election or appointment No person shall draw a salary for more than one office or position in the Government of Puerto Rico

11. The salaries of the Governor, the Secretaries, the members of the Legislative Assembly, the Controller and Judges shall be fixed by a special law and, except for the salaries of the members of the Legislative Assembly, shall not be decreased during the terms for which they are elected or appointed The salaries of the Governor and the Controller shall not be increased during said terms No increase in the salaries of the members of the Legislative Assembly shall take effect until after the expiration of the term of the Legislative Assembly during which it is enacted Any reduction of the salaries of the members of the Legislative Assembly shall be effective only during the term of the Legislative Assembly which approves it

12. The Governor shall occupy and use, free of rent, the buildings and properties belonging to the Commonwealth which have been or shall hereafter be used and occupied by him as chief executive

13. The procedure for granting franchises, rights, privileges and concessions of a public or quasi-public nature shall be determined by law, but every concession of this kind to a person or private entity must be approved by the Governor or by the executive official whom he designates Every franchise, right, privilege or concession of a public or quasi-public nature shall be subject to amendment, alteration or repeal as determined by law

14. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed, five hundred acres of land, and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture

Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title

Corporations not organized in Puerto Rico, but doing business in Puerto Rico shall be bound by the provisions of this section so far as they are applicable

These provisions shall not prevent the ownership, possession or management of lands in excess of five hundred acres by the Commonwealth, its agencies or instrumentalities

15. The Legislative Assembly shall determine all matters concerning the flag, the seal and the anthem of the Commonwealth. Once determined, no law changing them shall take effect until one year after the general election next following the date of enactment of said law

16. All public officials and employees of the Commonwealth, its agencies, instrumentalities and political subdivisions, before entering upon their respective duties, shall take an oath to support the Constitution of the United States and the Constitution and laws of the Commonwealth of Puerto Rico

17. In case of invasion, rebellion, epidemic or any other event giving rise to a state of emergency, the Governor may call the Legislative Assembly to meet in a place other than the Capitol of Puerto Rico, subject to the approval or disapproval of the Legislative Assembly. Under the same conditions, the Governor may, during the period of emergency, order the Government, its agencies and instrumentalities to be moved temporarily to a place other than the seat of the Government

18. All criminal actions in the courts of the Commonwealth shall be conducted in the name and by the authority of "The People of Puerto Rico" until otherwise provided by law

19. It shall be the public policy of the Commonwealth to conserve, develop, and use its natural resources in the most effective manner possible for the general welfare of the community, to conserve and maintain buildings and places declared by the Legislative Assembly to be of historic or artistic value; to regulate its penal institutions in a manner that effectively achieves their purposes and to provide, within the limits of available resources, for adequate treatment of delinquents in order to make possible their moral and social rehabilitation

## ARTICLE VII

### AMENDMENTS TO THE CONSTITUTION

1. The Legislative Assembly may propose amendments to this Constitution by a concurrent resolution approved by not less than two-thirds of the total number of members of which each House is composed. All proposed amendments shall be submitted to the qualified electors in a special referendum, but if the concurrent resolution is approved by not less than three-fourths of the total number of members of which each House is composed, the Legislative Assembly may provide that the referendum shall be held at the same time as the next general election. Each proposed amendment shall be voted on separately and not more than three proposed amendments may be submitted at the same referendum. Every proposed amendment shall specify the terms under which it shall take effect, and it shall become a part of

Article 8]

this Constitution if it is ratified by a majority of the electors voting thereon. Once approved, a proposed amendment must be published at least three months prior to the date of the referendum.

2. The Legislative Assembly, by a concurrent resolution approved by two-thirds of the total number of members of which each House is composed, may submit to the qualified electors at a referendum, held at the same time as a general election, the question of whether a Constitutional Convention shall be called to revise this Constitution. If a majority of the electors voting on this question vote in favour of the revision, it shall be made by a Constitutional Convention elected in the manner provided by law. Every revision of this Constitution shall be submitted to the qualified electors at a special referendum for ratification or rejection by a majority of the votes cast at the referendum.

3. No amendment to this Constitution shall alter the republican form of Government established by it or abolish its Bill of Rights.

# ARTICLE VIII

## SENATORIAL AND REPRESENTATIVE DISTRICTS

1. The senatorial and representative districts shall be the following:

**SENATORIAL DISTRICT OF SAN JUAN**, which shall be composed of the following Representative Districts: 1 The Capitol of Puerto Rico, excluding the present electoral precincts of Santurce and Rio Piedras, 2 Electoral zones numbers 1 and 2 of the present precinct of Santurce, 3 Electoral zone number 8 of the present precinct of Santurce, 4 Electoral zone number 4 of the present precinct of Santurce, and 5 Wards Hato Rey, Puerto Nuevo and Caparra Heights of the Capital of Puerto Rico.

**SENATORIAL DISTRICT OF BAYAMON**, which shall be composed of the following Representative Districts: 6 The municipality of Bayamon, 7 The municipalities of Carolina and Trujillo Alto, 8 The present electoral precinct of Rio Piedras, excluding wards Hato Rey, Puerto Nuevo and Caparra Heights of the Capital of Puerto Rico, 9 The municipalities of Catano, Guaynabo and Toa Baja, and 10 The municipalities of Toa Alta, Corozal and Naranjito.

**SENATORIAL DISTRICT OF ARECIBO**, which shall be composed of the following Representative Districts: 11 The municipalities of Vega Baja, Vega Alta and Dorado, 12 The municipalities of Manati and Barceloneta, 13 The municipalities of Ciales and Morovis, 14 The municipality of Arecibo, and 16 The municipality of Utuado.

**SENATORIAL DISTRICT OF AGUADILLA**, which shall be composed of the following Representative Districts: 16 The municipalities of Camuy, Hatillo and Quebradillas, 17 The municipalities of Aguadilla and Isabela, 18 The municipalities of San Sebastian and Moca, 19 The municipalities of Lares, Las Marías and Manzanilla, and 20 The municipalities of Anasco, Aguada and Rincon.

**SENATORIAL DISTRICT OF MAYAGUEZ**, which shall be composed of the following Representative Districts: 21 The municipality of Mayaguez, 22 The

municipalities of Cabo Rojo, Hormigueros and Lajas, 28 The municipalities of San German and cabana Grande, 24 The municipalities of Yauco and Guanica, and 26 The municipalities of Guayanilla and Penuelas

SENATORIAL DISTRICT OF PONCE, which shall be composed of the following Representative Districts: 26 The first, second, third, fourth, fifth and sixth wards and the City Beach of the municipality of Ponce, 27 The municipality of Ponce, except for the first, second, third, fourth, fifth and sixth wards and the City Beach, 28 The municipalities of Adjuntas and Jayuya, 29 The municipalities of Juana Diaz, Santa Isabel and Villalba, and 30 The municipalities of Coamo and Orocovis

SENATORIAL DISTRICT OF GUAYAMA, which shall be composed of the following Representative Districts 31 The municipalities of Aibonito, Barranquitas and Comerio, 32 The municipalities of Cayey and Cidra, 33 The municipalities of Caguas and Aguas Buenas, 34 The municipalities of Guayama and Salinas, and 35 The municipalities of Paullas, Maunabo and Arroyo

SENATORIAL DISTRICT OF HUMACAO, which shall be composed of the following Representative Districts 36 The municipalities of Humacao and Yabucoa, 37 The municipalities of Juncos, Gurabo and San Lorenzo, 38 The municipalities of Naguabo, Ceiba and Las Piedras, 39 The municipalities of Fajardo and Vieques and the Island of Culebra, and 40 The municipalities of Rio Grande, Loiza and Luquillo

2. Electoral zones numbers 1, 2, 3 and 4 included in three representative districts within the senatorial district of San Juan are those presently existing for purposes of electoral organization in the second precinct of San Juan

## ARTICLE IX

### TRANSITORY PROVISIONS

1. When this Constitution goes into effect all laws not inconsistent therewith shall continue in full force until amended or repealed, or until they expire by their own terms

Unless otherwise provided by this Constitution, civil and criminal liabilities, rights, franchises, concessions, privileges, claims, actions, causes of action, contracts, and civil, criminal and administrative proceedings shall continue unaffected, notwithstanding the taking effect of this Constitution

2. All officers who are in office by election or appointment on the date this Constitution takes effect shall continue to hold their offices and to perform the functions thereof in a manner not inconsistent with this Constitution, unless the functions of their offices are abolished or until their successors are selected and qualify in accordance with this Constitution and laws enacted pursuant thereto

3. Notwithstanding the age limit fixed by this Constitution for compulsory retirement, all the Judges of the courts of Puerto Rico who are holding office on the date this Constitution takes effect shall continue to hold

Article 9]

their judicial offices until the expiration of the terms for which they were appointed, and in the case of Justices of the Supreme Court during good behavior

4 The Commonwealth of Puerto Rico shall be the successor of the People of Puerto Rico for all purposes, including without limitation the collection and payment of debts and liabilities in accordance with their terms

5. When this Constitution goes into effect, the term "citizen of the Commonwealth of Puerto Rico" shall replace the term "citizen of Puerto Rico" as previously used

6. Political parties shall continue to enjoy all rights recognized by the election law, provided that on the effective date of this Constitution they fulfill the minimum requirements for the registration of new parties contained in said law. Five years after this Constitution shall have taken effect the Legislative Assembly may change these requirements, but any law increasing them shall not, go into effect until after the general election next following its enactment

7 The Legislative Assembly may enact the laws necessary to supplement and make effective these transitory provisions in order to assure the functioning of the Government until the officers provided for by this Constitution are elected or appointed and qualify, and until this Constitution takes effect in all respects

8 If the Legislative Assembly creates a Department of Commerce, the Department of Agriculture and Commerce shall thereafter be called the Department of Agriculture

9. The first election under the provisions of this Constitution shall be held on the date provided by law, but not later than six months after the effective date of this Constitution

The second general election under this Constitution shall be held in the month of November 1956 on a day provided by law

10 This Constitution shall take effect when the Governor so proclaims, but not later than sixty days after its ratification by the Congress of the United States

Done in Convention, at San Juan, Puerto Rico, on the sixth day of February, in the year of Our Lord one thousand nine hundred and fifty-two

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# 29

## CONSTITUTION OF RUSSIAN FEDERATION

{Adopted on 12 Dec 1993}

### PREAMBLE

We, the multinational people of the Russian Federation, united by a common destiny on our land,  
asserting human rights and liberties, civil peace and accord,  
preserving the historic unity of the State,  
proceeding from the commonly recognized principles of equality and self-determination of the peoples,  
honoring the memory of our ancestors, who have passed on to us love of and respect for our homeland and faith in good and justice,  
reviving the sovereign statehood of Russia and asserting its immutable democratic foundations,  
striving to secure the well-being and prosperity of Russia and proceeding from a sense of responsibility for our homeland before the present and future generations, and  
being aware of ourselves as part of the world community,  
hereby approve the Constitution of the Russian Federation

### CHAPTER 1

#### FUNDAMENTALS OF THE CONSTITUTIONAL SYSTEM

1. The Russian Federation-Russia shall be a democratic Federal rule-of-law State with the republican form of Government. The names "Russian Federation" and "Russia" shall be equivalent

2. Man, his rights and freedoms shall be the supreme value. It shall be a duty of the State to recognize, respect and protect the rights and liberties of man and citizen.

3. (1) The multinational people of the Russian Federation shall be the vehicle of sovereignty and the only source of power in the Russian Federation.

(2) The people of the Russian Federation shall exercise their power directly, and also through organs of State power and local self-government.

(3) The referendum and free elections shall be the supreme direct manifestation of the power of the people.

(4) No one may arrogate to oneself power in the Russian Federation. Seizure of power or appropriation of power authorization shall be prosecuted under Federal law.

4. (1) The sovereignty of the Russian Federation shall apply to its entire territory.

(2) The Constitution of the Russian Federation and Federal laws shall have supremacy throughout the entire territory of the Russian Federation.

(3) The Russian Federation shall ensure the integrity and inviolability of its territory.

5. (1) The Russian Federation shall consist of republics, territories, regions, Federal cities, an autonomous region and autonomous areas, which shall be equal subjects of the Russian Federation.

(2) The republic (State) shall have its own Constitution and legislation. A territory, region, Federal city, autonomous region and autonomous area shall have its own Charter and legislation.

(3) The federated structure of the Russian Federation shall be based on its State integrity, the uniform system of State power, delimitation of scopes of authority and powers between the bodies of State power of the Russian Federation and the bodies of State power of the subjects of the Russian Federation, equality and self-determination of the peoples in the Russian Federation.

(4) All the subjects of the Russian Federation shall be equal among themselves in relations with the Federal bodies of State power.

6. (1) Citizenship of the Russian Federation shall be acquired and terminated in accordance with the Federal law, and shall be one and equal irrespective of the grounds on which it has been acquired.

(2) Every citizen of the Russian Federation shall have all the rights and liberties on its territory and bear equal duties, stipulated by the Constitution.

(3) A citizen of the Russian Federation may not be stripped of citizenship or of the right to change it.

7. (1) The Russian Federation shall be a social State whose policies shall be aimed at creating conditions which ensure a dignified life and free development of man.

(2) The Russian Federation shall protect the work and health of its citizens, which a guaranteed minimum wage provide State support for

family, motherhood, fatherhood and childhood, and also for the disabled and for elderly citizens, develop a system of social services and establish Government pensions, benefits and other social security guarantees

8. (1) Unity of economic space, free movement of goods, services and financial resources, support for competition and freedom of any economic activity shall be guaranteed in the Russian Federation

(2) Private, State, municipal and other forms of ownership shall be recognized and shall enjoy equal protection in the Russian Federation

9. (1) The land and other natural resources shall be used and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories

(2) The land and other natural resources may be in private, State municipal and other forms of ownership

10. State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent

11. (1) State power in the Russian Federation shall be exercised by the President of the Russian Federation, the Federal Assembly (Council of the Federation and State Duma), the Government of the Russian Federation and courts of the Russian Federation

(2) State power in the subjects of the Russian Federation shall be exercised by the organs of State authority formed by them

(3) The scopes of authority and powers of the bodies of State authority of the Russian Federation and the bodies of State authority of the subjects of the Russian Federation shall be delimited under this Constitution, Federal and other Treaties on the delimitation of scopes of authority and powers

12. Local self-Government shall be recognized and guaranteed in the Russian Federation. Local self-Government shall operate independently within the bounds of its authority. The bodies of local self-Government shall not be part of the State power bodies

13. (1) Ideological plurality shall be recognized in the Russian Federation

(2) No ideology may be instituted as a State-sponsored or mandatory ideology

(3) Political plurality and the multi-party system shall be recognized in the Russian Federation

(4) Public associations shall be equal before the law

(5) The establishment and the activities of public associations, whose aims and actions are directed at forcible alteration of the fundamentals of constitutional governance and violation of the integrity of the Russian Federation and undermining of the security of the State, the forming of armed units, the incitement of social, racial, national and religious strife shall be prohibited

## Articles 14-19]

14 (1) The Russian Federation shall be a secular State. No religion may be instituted as State-sponsored or mandatory religion.

(2) Religious associations shall be separated from the State, and shall be equal before the law.

15 (1) The Constitution shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation. Laws and other legal Acts adopted by the Russian Federation may not contravene the Constitution.

(2) Organs of State power and local self-government, officials, citizens and their associations must comply with the laws and the Constitution.

(3) The laws shall be officially published. Unpublished laws shall not be applicable. No regulatory legal Act affecting the rights, liberties or duties of the human being and citizen may apply unless it has been published officially for general knowledge.

(4) The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.

16. (1) The provisions of the present Chapter of the Constitution shall be the foundations of the constitutional system of the Russian Federation and may not be changed except as provided for in this Constitution.

(2) No other provisions of this Constitution may contravene the foundations of the constitutional system of the Russian Federation.

## CHAPTER 2

## RIGHTS AND LIBERTIES OF MAN AND CITIZEN

17. (1) The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under this Constitution.

(2) The basic rights and liberties of the human being shall be unalienable and shall belong to every one from birth.

(3) The exercise of rights and liberties of a human being and citizen may not violate the rights and liberties of other persons.

18. The rights and liberties of man and citizen shall have direct effect. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local self-government and shall be secured by the judiciary.

19. (1) All people shall be equal before the law and in the court of law.

(2) The State shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on racial, national, linguistic or religious grounds shall be forbidden.

(3) Man and woman shall have equal rights and liberties and equal opportunities for their pursuit

20. (1) Everyone shall have the right to life

(2) Capital punishment may, until its abolition, be instituted by the Federal law as exceptional punishment for especially grave crimes against life, with the accused having the right to have his case considered in a law court by jury

21. (1) The dignity of the person shall be protected by the State. No circumstance may be used as a pretext for belittling it

(2) No one may be subjected to torture, violence or any other harsh or humiliating treatment or punishment. No one may be subjected to medical, scientific or other experiments without his or her free consent

22. (1) Everyone shall have the right to freedom and personal inviolability

(2) Arrest, detention and keeping in custody shall be allowed only by an order of a court of law. No person may be detained for more than 48 hours without an order of a court of law

23. (1) Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honor and good name

(2) Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law

24. (1) It shall be forbidden to gather, store, use and disseminate information on the private life of any person without his/her consent

(2) The bodies of State authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law

25. The home shall be inviolable. No one shall have the right to enter the home against the will of persons residing in it except in cases stipulated by the Federal law or under an order of a court of law

26. (1) Everyone shall have the right to determine and State his national identity. No one can be forced to determine and State his national identity

(2) Everyone shall have the right to use his native language, freely choose the language of communication, education, training and creative work

27. (1) Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to choose the place to stay and reside

(2) Everyone shall be free to leave the boundaries of the Russian Federation. The citizens of the Russian Federation shall have the right to freely return into the Russian Federation

28. Everyone shall be guaranteed the right to freedom of conscience, to freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose,

possess and disseminate religious or other beliefs, and to act in conformity with them

29. (1) Everyone shall have the right to freedom of thought and speech

(2) Propaganda or campaigning inciting social, racial, national or religious hatred and strife is impermissible. The propaganda of social, racial, national, religious or language superiority is forbidden

(3) No one may be coerced into expressing one's views and convictions or into renouncing them

(4) Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. The list of information constituting the State secret shall be established by the Federal law

(5) The freedom of the mass media shall be guaranteed. Censorship shall be prohibited

30. (1) Everyone shall have the right to association, including the right to create trade unions in order to protect one's interests. The freedom of public associations activities shall be guaranteed

(2) No one may be coerced into joining any association or into membership thereof

31. Citizens of the Russian Federation shall have the right to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches and pickets

32. (1) Citizens of the Russian Federation shall have the right to participate in the administration of the affairs of the State both directly and through their representatives

(2) Citizens of the Russian Federation shall have the right to elect and to be elected to bodies of State governance and to organs of local self-government, as well as take part in a referendum

(3) Citizens who have been found by a court of law to be under special disability, and also citizens placed in detention under a court verdict, shall not have the right to elect or to be elected

(4) Citizens of the Russian Federation shall have equal access to State service

(5) Citizens of the Russian Federation shall have the right to participate in administering justice

33. Citizens of the Russian Federation shall have the right to turn personally to, and send individual and collective petitions to State bodies and bodies of local self-government

34. (1) Everyone shall have the right to freely use his or her abilities and property for entrepreneurial or any other economic activity not prohibited by the law

(2) An economic activity aimed at monopolization or unfair competition shall be allowed

35. (1) The right of private property shall be protected by law.

(2) Everyone shall have the right to have property in his or her ownership, to possess, use and manage it either individually or jointly with other persons

(3) No one may be arbitrarily deprived of his or her property unless on the basis of decision by a court of law. Property can be forcibly alienated for State needs only on condition of a preliminary and equal compensation

(4) The right of inheritance shall be guaranteed

36. (1) Citizens and their associations shall have the right to have land in their private ownership

(2) The possession, use and management of the land and other natural resources shall be freely exercised by their owners provided this does not cause damage to the environment or infringe upon the rights and interests of other persons

(3) The terms and procedures for the use of land shall be determined on the basis of Federal laws

37. (1) Work shall be free. Everyone shall have the right to make free use of his or her abilities for work and to choose a type of activity and occupation

(2) Forced labor shall be prohibited

(3) Everyone shall have the right to work under conditions meeting the requirements of safety and hygiene, to remuneration for work without any discrimination whatsoever and not below the statutory minimum wage, and also the right to security against unemployment

(4) The right to individual and collective labour disputes with the use of means of resolution thereof established by Federal law, including the right to strike, shall be recognized

(5) Everyone shall have the right to rest and leisure. A person having a work contract shall be guaranteed the statutory duration of the work time, days off and holidays, and paid annual vacation

38. (1) Motherhood and childhood, and the family shall be under State protection

(2) Care for children and their upbringing shall be the equal right and duty of the parents

(3) Employable children who have reached 18 years old shall care for their non-employable parents

39. (1) Everyone shall be guaranteed social security in old age, in case of disease, invalidity, loss of breadwinner, to bring up children and in other cases established by law

(2) State pensions and social benefits shall be established by laws

(3) Voluntary social insurance, development of additional forms of social security and charity shall be encouraged

40. (1) Everyone shall have the right to a home. No one may be arbitrarily deprived of a home

(2) State bodies and organs of local self-Government shall encourage home construction and create conditions for the realization of the right to a home

(3) Low-income citizens and other citizens, defined by the law, who are in need of housing shall be housed free of charge or for affordable pay from Government, municipal and other housing funds in conformity with the norms stipulated by the law

41. (1) Everyone shall have the right to health care and medical assistance. Medical assistance shall be made available by State and municipal health care institutions to citizens free of charge, with the money from the relevant budget, insurance payments and other revenues

(2) The Russian Federation shall finance Federal health care and health-building programs, take measures to develop State, municipal and private health care systems, encourage activities contributing to the strengthening of the man's health, to the development of physical culture and sport, and to ecological, sanitary and epidemiologic welfare

(3) Concealment by officials of facts and circumstances posing hazards to human life and health shall involve liability in conformity with the Federal law

42. Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations

43. (1) Everyone shall have the right to education

(2) The accessibility and gratuity of pre-school, general secondary and vocational secondary education in public and municipal educational institutions and enterprises shall be guaranteed

(3) Everyone shall have the right to receive, free of charge and on a competitive basis, higher education in a State or municipal educational institution or enterprise

(4) Basic general education shall be mandatory. Parents or persons substituting for them shall make provisions for their children to receive basic general education

(5) The Russian Federation shall institute Federal State educational standards and support various forms of education and self-education

44. (1) Everyone shall be guaranteed freedom of literary, artistic, scientific, intellectual and other types of creative activity and tuition. Intellectual property shall be protected by the law

(2) Everyone shall have the right to participation in cultural life, to the use of institutions of culture, and access to cultural values

(3) Everyone shall care for the preservation of the historic and cultural heritage and safeguard landmarks of history and culture

45. (1) State protection for human rights and liberties in the Russian Federation shall be guaranteed

(2) Everyone shall have the right to defend his or her rights and liberties by any means not prohibited by the law

46. (1) Everyone shall be guaranteed protection of his or her rights and liberties in a court of law

(2) The decisions and actions (or inaction) of State organs, organs of local self-government, public associations and officials may be appealed against in a court of law

(3) In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to inter-State organs concerned with the protection of human rights and liberties when all the means of legal protection available within the State have been exhausted

47. (1) No one may be denied the right to having his or her case reviewed by the court and the judge under whose jurisdiction the given case falls under the law.

(2) Anyone charged with a crime has the right to have his or her case reviewed by a court of law with the participation of jurors in cases stipulated by the Federal law.

48. (1) Everyone shall be guaranteed the right to qualified legal counsel. Legal counsel shall be provided free of charge in cases stipulated by the law

(2) Every person who has been detained, taken into custody or charged with a crime shall have the right to legal counsel (defense attorney) from the moment of, respectively, detention or indictment

49. (1) Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by the Federal law and established by the verdict of a court of law

(2) The defendant shall not be obliged to prove his or her innocence

(3) The benefit of doubt shall be interpreted in favour of the defendant

50. (1) No one may be repeatedly convicted for the same offense

(2) In the administration of justice no evidence obtained in violation of the Federal law shall be allowed

(3) Everyone sentenced for a crime shall have the right to have the sentence reviewed by a higher court according to the procedure instituted by the Federal law, and also the right to plea for clemency or mitigation punishment

51. (1) No one shall be obliged to give evidence against himself or herself, for his or her spouse and close relatives, the range of which shall be established by the Federal law

(2) The Federal law may stipulate other exemptions from the obligation to give evidence

52. The rights of persons who have sustained harm from crimes and abuses of power shall be protected by the law. The State shall guarantee the victims access to justice and compensation for damage

53. Everyone shall have the right to compensation by the State for the damage caused by unlawful actions (or inaction) of State organs, or their officials

54. (1) The law instituting or aggravating the liability of a person shall have no retroactive force.

(2) No one may be held liable for an action which was not recognized as an offense at the time of its commitment. If liability for an offense has been lifted or mitigated after its perpetration, the new law shall apply

55. (1) The listing of the basic rights and liberties in the Constitution shall not be interpreted as the denial or belittlement of the other commonly recognized human and citizens' rights and liberties

(2) No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation

(3) Human and civil rights and liberties may be restricted by the Federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the State

56. Individual Restrictions of rights and liberties with identification of the extent and of their duration may be instituted in conformity with the Federal constitutional law under conditions of the State of emergency in order to ensure the safety of citizens and protection of the constitutional system

(2) A State of emergency throughout the territory of the Russian Federation and in individual areas thereof may be introduced in the circumstances and in conformity with the procedures defined by the Federal constitutional law

(3) The rights and liberties stipulated by Articles 20, 21, 23 (1), 24, 28, 34 (1), 40 (1), 46-54 of the Constitution shall not be subject to restriction

57. Everyone shall pay lawful taxes and fees. Laws introducing new taxes or worsening the situation of tax payers shall not have retroactive force

58. Everyone shall be obliged to preserve nature and the environment, and care for natural wealth

59. (1) Defense of the homeland shall be a duty and obligation of the citizen of the Russian Federation

(2) The citizen of the Russian Federation shall do military service in conformity with the Federal law

(3) The citizen of the Russian Federation whose convictions and faith are at odds with military service, and also in other cases stipulated by the Federal law shall have the right to the substitution of an alternative civil service for military service

60. The citizen of the Russian Federation shall be recognized to be of legal age and may independently exercise his rights and duties in full upon reaching the age of 18

61. (1) The citizen of the Russian Federation may not be deported out of Russia or extradited to another State.

(2) The Russian Federation shall guarantee its citizens defense and refuge beyond its boundaries

62. (1) The citizen of the Russian Federation may have the citizenship of a foreign State (dual citizenship) in conformity with the Federal law or international treaty of the Russian Federation.

(2) Possession of the citizenship of a foreign State by the citizen of the Russian Federation shall not belittle his or her ranks and liberties or exempt him or her from the duties stemming from Russian citizenship unless otherwise stipulated by the Federal law or international treaty of the Russian Federation

(3) Foreign citizens and stateless persons shall enjoy in the Russian Federation the rights of its citizens and bear their duties with the exception of cases stipulated by the Federal law or international treaty of the Russian Federation

63. (1) The Russian Federation shall grant political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of the international law

(2) The extradition of persons persecuted for their political views or any actions (or inaction), which are not qualified as criminal by the law of the Russian Federation, to other States shall not be allowed in the Russian Federation. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be effected on the basis of the Federal law or international treaty of the Russian Federation

64. The provisions of these Articles form the basis of personal rights in the Russian Federation and may not be changed other than by the means set forth in this Constitution

### CHAPTER 3

#### RUSSIAN FEDERATION

65. (1) The Russian Federation shall consist of the subjects of the Federation: Republic of Adygeya (Adygeya), Republic of Altai, Republic of Bashkortostan, Republic of Buryatia, Republic of Dagestan, Ingush Republic, Kabardin-Balkar Republic, Republic of Kalmykia — Khalmg Tangch, Karachayevo-Cherkess Republic, Republic of Karelia, Republic of Komi, Republic of Mari El, Republic of Mordovia, Republic of Sakha (Yakutia), Republic of North Ossetia, Republic of Tatarstan (Tatarstan), Republic of Tuva, Udmurt Republic, Republic of Khakassia, Chechen Republic, Chuvash Republic—

Chuvash Republics, Altai Territory, Krasnodar Territory, Krasnoyarsk Territory, Maritime Territory, Stavropol Territory, Khabarovsk Territory, Amur Region, Arkhangelsk Region, Astrakhan Region, Belgorod Region, Bryansk Region, Vladimir Region, Volgograd Region, Vologda Region, Voronezh Region, Ivanovo Region, Irkutsk Region, Kaliningrad Region, Kaluga Region, Kamchatka Region, Kemerovo Region, Kirov Region, Kostroma Region, Kurgan Region, Kursk Region, Leningrad Region, Lipetsk Region, Magadan Region, Moscow Region, Murmansk Region, Nizhny Novgorod Region, Novgorod

Region, Novosibirsk Region, Omsk Region, Orenburg Region, Oryol Region, Penza Region, Perm Region, Pskov Region, Rostov Region, Ryazan Region, Samara Region, Saratov Region, Sakhalin Region, Sverdlovsk Region, Smolensk Region, Tambov Region, Tver Region, Tomsk Region, Tula Region, Tyumen Region, Ulyanovsk Region, Chelyabinsk Region, Chita Region, Yaroslavl Region, Moscow, St. Petersburg — Federal cities, Jewish Autonomous Region, Aginsky Buryat Autonomous Area, Komi-Permyak Autonomous Area, Koryak Autonomous Area, Nenets Autonomous Area, Taimyr (Dolgan-Nenets) Autonomous Area, Ust-Ordynsky Buryat Autonomous Area, Khanty-Mansi Autonomous Area, Chukchi Autonomous Area, Evenk Autonomous Area, Yamal-Nenets Autonomous Area

(2) Accession to the Russian Federation and formation of a new subject of the Russian Federation within it shall be carried out as envisaged by the Federal constitutional law

66. (1) The status of a Republic shall be defined by the Constitution and the Constitution of the Republic in question

(2) The status of a territory, region, Federal city, and autonomous region and autonomous area shall be determined by Constitution and the Charter of the territory, region, city of Federal importance, autonomous region, autonomous area, adopted by the legislative (representative) body of the relevant subject of the Russian Federation

(3) A Federal law on autonomous region, autonomous area may be adopted at the nomination from the legislative and executive bodies of an autonomous region, autonomous area

(4) Relations between autonomous areas within a territory or region may be regulated by the Federal law and an agreement between bodies of State power of the autonomous area and, respectively, bodies of State power of the territory or the region

(5) The status of a subject of the Russian Federation may be changed only with mutual consent of the Russian Federation and the subject of the Russian Federation in accordance with the Federal constitutional law

67. (1) The territory of the Russian Federation shall incorporate the territories of its subjects, the internal and territorial seas and the air space over them

(2) The Russian Federation shall have sovereign rights and exercise jurisdiction on the continental shelf and in the exclusive economic zone of the Russian Federation under the procedure stipulated by the Federal law and norms of international law

(3) The boundaries between the subjects of the Russian Federation may be changed by their mutual agreement

68. (1) The State language of the Russian Federation throughout its territory shall be the Russian language.

(2) The Republics shall have the right to institute their own State languages. They shall be used alongside the State language of the Russian

Federation in bodies of State power, bodies of local self-Government and State institutions of the republics

(3) The Russian Federation shall guarantee all its peoples the right to preserve their native language and to create the conditions for its study and development.

69. The Russian Federation guarantees the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation.

70. (1) The national flag, State Emblem, and the national anthem, their description and the procedure for their official use shall be established by the Federal constitutional law.

(2) The capital of the Russian Federation is the city of Moscow. The status of the capital shall be established by the Federal law.

"1. The jurisdiction of the Russian Federation shall include:—

a) the adoption and amendment of the Constitution and Federal laws and supervision over compliance with them;

b) the Federal structure and territory of the Russian Federation;

c) regulation and protection of the rights and liberties of the human being and citizen; citizenship of the Russian Federation; regulation and protection of the rights of national minorities;

d) establishment of the system of Federal bodies of legislative executive and judiciary power, procedure for the organization and activities thereof; formation of Federal bodies of State power;

e) Federal and State property and management thereof;

f) determining the basic principles of Federal policy and Federal programs in the field of State structure, the economy, the environment, and the social, cultural and national development of the Russian Federation;

g) establishment of the legal framework for a single market, financial, monetary, credit and customs regulation, emission of money and guidelines for price policy, Federal economic services, including Federal banks;

h) the Federal budget; Federal taxes and levies; Federal funds of regional development;

i) Federal power grids, nuclear energy, fissionable materials, Federal transport, railways, information and communications; space activities,

j) foreign policy and international relations of the Russian Federation, international treaties of the Russian questions of war and peace,

k) foreign trade relations of the Russian Federation;

l) defense and security; defense production; determining procedures for the sale and purchase of arms, ammunition, military hardware and other equipment; production of fissionable materials, toxic substances, narcotics and procedure for the use thereof.

m) defining the status and protection of the State border, territorial waters, the air space, the exclusive economic zone and the continental shelf of the Russian Federation,

n) law courts, Prosecutor's Office, criminal, criminal-procedural and criminal-executive legislation, amnesty and pardon, civil, civil-procedural and arbitration-procedural legislation, legal regulation of intellectual property,

o) Federal conflict of laws,

p) meteorological service, standards, models, the metric system and time measurement, geodesy and cartography, names of geographical objects, official statistics and accounting,

q) State decorations and honorary titles of the Russian Federation,

r) Federal State Service

72. (1) The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation shall include

a) ensuring compliance of the constitutions and laws of the Republics, Charters, laws, and other regulatory legal Acts of the territories, regions, Federal cities, the autonomous region and autonomous areas with the Constitution and the Federal laws,

b) protection of the rights and freedoms of man and citizen, protection of the rights of ethnic minorities, ensuring legality, law and order, and public safety, border zone regime,

c) issues of the possession, use and management of the land, mineral resources, water and other natural resources,

d) delimitation of State property,

e) management of natural resources, protection of the environment and ecological safety, specially protected natural reserves, protection of historical and cultural monuments,

f) general questions of upbringing, education, science, culture, physical culture and sports,

g) coordination of health issues, protection of family, motherhood, fatherhood and childhood, social protection including social security,

h) implementing measures to combat catastrophes, natural disasters, epidemics and eliminating consequences thereof

i) establishment of the general guidelines for taxation and levies in the Russian Federation,

j) administrative, administrative-procedural, labour, family, housing, land, water and forestry legislation legislation on the sub-surface and environmental protection

k) cadres of judiciary and law-enforcement agencies, the bar, notaries,

l) protection of the original environment and traditional way of life of all ethnic communities.

m) establishment of general guidelines of the organization of the system of bodies of State power and local self-government,

n) coordination of the international and external economic relations of the subjects of the Russian Federation, compliance with the international treaties of the Russian Federation

(2) The provisions of this Article shall equally apply to the Republics territories, regions, Federal cities, the autonomous region and autonomous areas

73. Outside of the jurisdiction of the Russian Federation and the powers of the Russian Federation on issues within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the subjects of the Russian Federation shall exercise the entire spectrum of State power

74. (1) No customs frontiers, duties, levies, or any other barriers for free movement of goods, services, or financial means may be established on the territory of the Russian Federation

(2) Restrictions on the movement of goods and services may be established under the Federal law, if this is necessary for the protection of the people's safety, their lives and health, protection of environment and cultural values

75. (1) The monetary unit of the Russian Federation shall be the Ruble. The monetary emission shall be the exclusive responsibility of the Central Bank of the Russian Federation. No other currencies may be issued in the Russian Federation

(2) The protection and stability of the ruble is the main function of the Central Bank of the Russian Federation which it shall exercise independently from other bodies of State power

(3) The system of taxes levied to the Federal budget and the general principles of taxation and levies in the Russian Federation shall be established by the Federal law

(4) State loans shall be issued in accordance with the procedure established by the Federal law and placed on a strictly voluntary basis

76. (1) On issues within the jurisdiction of the Russian Federation Federal constitutional laws and Federal laws shall be adopted having direct effect throughout the territory of the Russian Federation

(2) On matters within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation Federal laws shall be issued and in accordance with them laws and other regulatory legal acts of the subjects of the Russian Federation shall be adopted

(3) Federal laws may not contravene Federal constitutional laws

(4) Outside of the jurisdiction of the Russian Federation and the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation republics, territories, regions, Federal cities autonomous regions and autonomous areas shall effect their own legal regulation including the adoption of laws and other regulatory legal Acts

(5) Laws and other regulatory legal Acts of the subjects of the Russian Federation may not contravene Federal laws adopted in accordance with Parts (1) and (2) of this Article. In the event of a contradiction between a Federal law and any other Act issued in the Russian Federation, the Federal law shall apply.

(6) In the event of a contradiction between the Federal law and a regulatory legal Act of a subject of the Russian Federation issued in accordance with part (4) of this Article, the regulatory legal Act of the subject of the Russian Federation shall apply.

77. (1) The system of State power bodies of the Republics, territories, regions, Federal cities, the autonomous region, autonomous areas shall be established by the subjects of the Russian Federation independently in accordance with the basic principles of the constitutional system of the Russian Federation and general principles of the organization of legislative and executive bodies of power as envisaged by the Federal law.

(2) Within the jurisdiction of the Russian Federation and the powers of the Russian Federation on issues within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation the Federal bodies of executive power and bodies of executive power of the subjects of the Russian Federation shall form the single system of executive power in the Russian Federation.

78. (1) To exercise their powers, the Federal bodies of executive power may set up their own territorial structures and appoint respective officials.

(2) By agreement with organs of executive power of the subjects of the Russian Federation, the Federal organs of executive power may delegate to them part of their powers provided this does not contravene the Constitution or Federal laws.

(3) By agreement with the Federal organs of executive power, organs of executive power of the subjects of the Russian Federation may delegate part of their powers to them.

(4) The President of the Russian Federation and the Government of the Russian Federation shall, under the Constitution, exercise the authority of Federal State power throughout the territory of the Russian Federation.

79. The Russian Federation may participate in inter-State associations and delegate some of its powers to them in accordance with international agreements if this does not restrict human or civil rights and liberties or contravene the fundamentals of the constitutional system of the Russian Federation.

#### CHAPTER 4

#### PRESIDENT OF THE RUSSIAN FEDERATION

80. (1) The President of the Russian Federation shall be the head of

(2) The President shall be the guarantor of the Constitution, and of human and civil rights and freedoms. In accordance with the procedure established by the Constitution, he shall take measures to protect the sovereignty of the Russian Federation, its independence and State integrity, and ensure concerted functioning and interaction of all bodies of State power.

(3) The President of the Russian Federation shall define the basic domestic and foreign policy guidelines of the State in accordance with the Constitution and Federal laws.

(4) The President of the Russian Federation as head of State shall represent the Russian Federation inside the country and in international relations.

81. (1) The President of the Russian Federation shall be elected for a term of four years by the citizens of the Russian Federation on the basis of general, equal and direct vote by secret ballot.

(2) A citizen of the Russian Federation not younger than 35, who has resided in the Russian Federation for not less than 10 years, may be elected President of the Russian Federation.

(3) No one person shall hold the office of President of the Russian Federation for more than two terms in succession.

(4) The procedure for electing the President of the Russian Federation shall be determined by Federal law.

82. (1) At his inauguration the President of the Russian Federation shall take the following oath to the people. "I vow, in the performance of my powers as the President of the Russian Federation to respect and protect the rights and freedoms of men and citizen, to observe and protect the Constitution, to protect the sovereignty and independence, security and integrity of the State and to serve the people faithfully."

(2) The oath shall be taken in a solemn atmosphere in the presence of members of the Council of the Federation, deputies of the State Duma and Judges of the Constitutional Court of the Russian Federation.

83. The President of the Russian Federation shall—

a) appoint Chairman of the Government of the Russian Federation subject to consent of the State Duma,

b) have the right to preside over meetings of the Government of the Russian Federation.

c) decide on resignation of the Government of the Russian Federation,

d) introduce to the State Duma a candidature for appointment to the office of the Chairman of the Central Bank of the Russian Federation; submit to the State Duma the proposal on relieving the Chairman of the Central Bank of the Russian Federation of his duties;

e) appoint and dismiss Deputy Chairmen of the Government of the Russian Federation and Federal ministers as proposed by the Chairman of the Government of the Russian Federation;

f) submit to the Federation Council candidates for appointment to the office of Judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation as well as the candidate for Prosecutor-General of the Russian Federation, submit to the Federation Council the proposal on relieving the Prosecutor-General of the Russian Federation of his duties, appoint the Judges of other Federal courts

g) form and head the Security Council of the Russian Federation, the status of which is determined by Federal law,

h) endorse the military doctrine of the Russian Federation,

i) form the staff of the President of the Russian Federation,

j) appoint and dismiss plenipotentiary representatives of the President of the Russian Federation,

k) appoint and dismiss the Supreme Command of the Armed Forces of the Russian Federation,

l) appoint and recall, after consultations with the respective committees or Commissions of the Federal Assembly, diplomatic representatives of the Russian Federation to foreign states and international organizations

84. The President of the Russian Federation shall

a) call elections to the Chambers of the State Duma in accordance with the Constitution and Federal law,

b) dissolve the State Duma in cases and under procedures envisaged by the Constitution,

c) call a referendum under procedures established by Federal constitutional law,

d) introduce draft laws in the State Duma,

e) sign and publish Federal laws,

f) present annual messages to the Federal Assembly on the situation in the country and on basic directions of the internal and external policies of the State

85. (1) The President of the Russian Federation may use dispute-settlement procedures to settle differences between organs of State power of the Russian Federation and organs of State power of the subjects of the Russian Federation, and also between organs of State power of the subjects of the Russian Federation. If no decision is agreed upon, he may turn the dispute over for review by the respective court of law.

(2) The President of the Russian Federation shall have the right to suspend Acts by organs of executive power of the subjects of the Russian Federation if such Acts contravene the Constitution and Federal laws, international obligations of the Russian Federation, or violate human and civil liberties pending the resolution of the issue in appropriate

86. The President of the Russian Federation shall—

- a) supervise the conduct of the foreign policy of the Russian Federation,
- b) conduct negotiations and sign international treaties of the Russian Federation,
- c) sign instruments of ratification,
- d) accept credentials and instruments of recall of diplomatic representatives accredited with him

87. (1) The President of the Russian Federation shall be the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation

(2) In the event of aggression against the Russian Federation or an immediate threat thereof, the President of the Russian Federation shall introduce martial law on the territory of the Russian Federation or in areas thereof with immediate notification thereof of the Federation Council and the State Duma

88. Under the circumstances and procedures envisaged by the Federal constitutional law, the President of the Russian Federation shall impose a State of emergency on the territory of the Russian Federation or in areas thereof with immediate notification of the Federation Council and the State Duma

89 The President of the Russian Federation shall—

- a) resolve issues of citizenship of the Russian Federation and of granting political asylum,
- b) award State decorations of the Russian Federation, confer honorary titles of the Russian Federation and top military ranks and top specialized titles,
- c) grant pardon

90. (1) The President of the Russian Federation shall issue decrees and executive orders

(2) The decrees and orders of the President of the Russian Federation shall be binding throughout the territory of the Russian Federation

(3) The decrees and orders of the President of the Russian Federation may not contravene the Constitution or Federal laws

91. The President of the Russian Federation shall possess immunity

92. (1) The President of the Russian Federation shall assume his powers from the time he shall be sworn in and terminate his exercise of such powers with the expiry of his tenure of office from the time the newly-elected President of the Russian Federation shall have been sworn in

(2) The powers of the President of the Russian Federation shall be terminated in the event of his resignation or sustained inability due to health to discharge his powers or in the event of impeachment. In such cases new elections of the President of the Russian Federation shall be held not later than three months after the early termination of the President's powers

(3) In all cases when the President of the Russian Federation shall be unable to perform his duties such duties shall be temporarily performed by the Chairman of the Government of the Russian Federation. The acting President of the Russian Federation shall have no right to dissolve the State Duma, call a referendum or make proposals on amendment or revision of the provisions of the Constitution.

93. (1) The President of the Russian Federation may be impeached by the Federation Council only on the basis of charges put forward against him of high treason or some other grave crime, confirmed by a ruling of the Supreme Court of the Russian Federation on the presence of indicia of crime in the President's actions and by a ruling of the Constitutional Court of the Russian Federation confirming that the procedure of bringing charges has been observed.

(2) The ruling of the State Duma on putting forward charges and the decision of the Federation Council on impeachment of the President shall be passed by the votes of two-thirds of the total number in each of the Chambers at the initiative of at least one-third of the deputies of the State Duma and in the presence of the opinion of a special commission formed by the State Duma.

(3) The decision of the Federation Council on impeaching the President of the Russian Federation shall be passed within three months of the charges being brought against the President by the State Duma. The charges against the President shall be considered to be rejected if the decision of the Federation Council shall not be passed.

## CHAPTER 5

### FEDERAL ASSEMBLY

94. The Federal Assembly-Parliament of the Russian Federation shall be the supreme representative and legislative body of the Russian Federation.

95. (1) The Federal Assembly shall consist of two Chambers - the Federation Council and the State Duma.

(2) Two deputies from each subject of the Federation shall be members of Federation Council, one from the representative and one from the executive bodies of State authority.

(3) The State Duma shall consist of 450 deputies.

96. (1) The State Duma shall be elected for a term of four years.

(2) The procedure for forming the Federation Council and the procedure for electing deputies to the State Duma shall be established by Federal law.

97. (1) Any citizen of the Russian Federation aged 21 and older who has the right to take part in elections may be elected deputy to the State Duma.

(2) One and the same person may not concurrently be a deputy to the Federation Council and to the State Duma. A deputy to the State Duma may

not be a deputy to any other representative body of State power or bodies of local self-government

(3) The deputies to the State Duma shall work on a permanent professional basis. Deputies to the State Duma may not be employed in the civil service or engage in any activities for remuneration other than teaching, research or other creative activities

98. (1) Deputies to the Federation Council and deputies to the State Duma shall possess immunity throughout their term in office. A deputy may not be detained, arrested, searched except when detained in the act of perpetrating a crime, and may not be subject to personal search except when such search shall be authorized by law to ensure the safety of other people

(2) The question of stripping a deputy of immunity shall be decided on the recommendation of the Prosecutor-General of the Russian Federation by the corresponding Chamber of the Federal Assembly

99. (1) The Federal Assembly shall be a permanent body

(2) The State Duma shall hold its first session on the 30th day after its election. The President of the Russian Federation may convene a session of the State Duma before this term

(3) The first session of the State Duma shall be opened by the oldest deputy

(4) From the start of the work of the new State Duma the powers of the previous State Duma shall cease

100. (1) The Federation Council and the State Duma shall sit separately

(2) The sessions of the Federation Council and the State Duma shall be open. Each Chamber has the right to hold closed sessions as envisaged by its rules

(3) The Chambers may have joint sessions to hear the addresses of the President of the Russian Federation, addresses of the Constitutional Court of the Russian Federation and speeches by leaders of foreign states

101. (1) The Federation Council shall elect from among its members the Chairman of the Federation Council and his deputies. The State Duma shall elect from among its members the Chairman of the State Duma and his deputies

(2) The Chairman of the Federation Council and his deputies, the Chairman of the State Duma and his deputies shall preside over the sessions and supervise the internal rules of the Chamber

(3) The Federation Council and the State Duma shall form Committees and Commissions, exercise parliamentary supervision over issues within their jurisdiction and hold parliamentary hearings

(4) Each Chamber shall adopt its own rules and solve questions of internal organization and work

(5) In order to exercise control over the Federal budget the Federation Council and the State Duma shall form an Accounting Chamber, the membership and rules of order of which shall be determined by Federal law

102. (1) The jurisdiction of the Federation Council shall include.—

a) approval of changes of borders between the subjects of the Russian Federation.

b) approval of the decree of the President of the Russian Federation on the introduction of martial law,

c) approval of the decree of the President of the Russian Federation on the introduction of a State of emergency;

d) making decisions on the possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation;

e) calling of elections of the President of the Russian Federation,

f) impeachment of the President of the Russian Federation;

g) the appointment of Judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and the Supreme Court of Arbitration of the Russian Federation,

h) the appointment to office and the removal from office of the Prosecutor-General of the Russian Federation;

i) the appointment to office and removal from office of the deputy Chairman of the Accounting Chamber and half of its staff of its auditors

(2) The Federation Council shall pass resolutions on the issues within its jurisdiction under the Constitution

(3) The decrees of the Federation Council shall be adopted by a majority of all deputies to the Federation Council unless otherwise provided for by the Constitution

103. (1) The jurisdiction of the State Duma shall include.—

a) granting consent to the President of the Russian Federation for the appointment of the Chairman of the Government of the Russian Federation,

b) decisions on confidence in the Government of the Russian Federation

c) the appointment and dismissal of the Chairman of the Central Bank of the Russian Federation,

d) the appointment and dismissal of the Chairman of the Accounting Chamber and half of its staff of auditors,

e) the appointment and dismissal of the Plenipotentiary for Human Rights acting in accordance with the Federal constitutional law,

f) granting amnesty,

g) bringing charges against the President of the Russian Federation for his impeachment

(2) The State Duma shall adopt resolutions on the issues of its jurisdiction envisaged by the Constitution

(3) The resolutions of the State Duma shall be adopted by a majority of votes of all deputies of the State Duma unless otherwise provided for by the Constitution

104. (1) The President of the Russian Federation, the Federation Council, the members to the Federation Council, the deputies to the State Duma, the Government of the Russian Federation and the legislative (representative) bodies of the subjects of the Russian Federation shall have the right of legislative initiative. The Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation shall also have the right of legislative initiative within their jurisdiction.

(2) Draft laws shall be introduced in the State Duma.

(3) The draft laws on the introduction or abolishing of taxes, exemptions from the payment thereof, on the issue of State loans, on changes in the financial obligations of the State and other draft laws providing for expenditures covered from the Federal budget may be introduced to the State Duma only with a corresponding resolution by the Government of the Russian Federation.

105. (1) Federal laws shall be passed by the State Duma.

(2) Federal laws shall be passed by a majority of votes of all deputies of the State Duma unless otherwise provided for by the Constitution.

(3) Laws adopted by the State Duma shall be passed to the Federation Council for review within five days.

(4) A Federal law shall be considered passed by the Federation Council if more than half of its deputies vote for it or if within fourteen days it has not been considered by the Federation Council. In the event the Federation Council shall reject the Federal law, the Chambers may set up a Conciliatory Commission to settle the differences, whereupon the Federal law shall again be considered by the State Duma.

(5) In the event the State Duma shall disagree with the decision of the Federation Council, the Federal law shall be considered adopted if, in the second voting, at least two-thirds of the total number of deputies to the State Duma vote for it.

106. The Federal laws adopted by the State Duma shall be considered by the Federation Council on a mandatory basis if such laws deal with the issues of —

- a) the Federal budget,
- b) Federal taxes and levies,
- c) financial, monetary, credit and customs regulations and money emission,
- d) ratification and denunciation of international treaties of the Russian Federation,
- e) the status and protection of the State border of the Russian Federation,
- f) war and peace.

107. (1) An adopted Federal law shall be sent to the President of the Russian Federation for signing and publication within five days.

(2) The President of the Russian Federation shall, within fourteen days, sign a Federal law and publish it

(3) If the President rejects a Federal law within fourteen days since it was sent to him, the State Duma and the Federation Council shall again consider the law in accordance with the procedure established by the Constitution. If, during the second hearings, the Federal law shall be approved in its earlier draft by a majority of not less than two thirds of the total number of deputies of the Federation Council and the State Duma, it shall be signed by the President of the Russian Federation within seven days and published

108 (1) Federal constitutional laws shall be passed on issues specified in the Constitution

(2) A Federal constitutional law shall be considered adopted, if it has been approved by a majority of at least three quarters of the total number of deputies of the Federation Council and at least two thirds of the total number of deputies of the State Duma. The adopted Federal constitutional law shall be signed by the President of the Russian Federation within fourteen days and published

109. (1) The State Duma may be dissolved by the President of the Russian Federation in cases stipulated in Articles 111 and 117 of the Constitution

(2) In the event of the dissolution of the State Duma, the President of the Russian Federation shall determine the date of elections so that the newly-elected State Duma shall convene not later than four months since the time of dissolution

(3) The State Duma may not be dissolved on grounds provided for by Article 117 of the Constitution within one year after its election

(4) The State Duma may not be dissolved since the time it has brought accusations against the President of the Russian Federation and until a corresponding decision has been taken by the Federation Council

(5) The State Duma may not be dissolved during the period of the State of emergency or martial law throughout the territory of the Russian Federation as well as within six months of the expiry of the term of office of the President of the Russian Federation

## CHAPTER 6

### THE GOVERNMENT OF THE RUSSIAN FEDERATION

110 (1) Executive power in the Russian Federation shall be exercised by the Government of the Russian Federation

(2) The Government of the Russian Federation shall consist of the Chairman of the Government of the Russian Federation, Deputy Chairmen of the Government and Federal Ministers

111. (1) The Chairman of the Government of the Russian Federation shall be appointed by the President of the Russian Federation with consent of the State Duma

(2) The proposal on the candidacy of the Chairman of the Government of the Russian Federation shall be made not later than two weeks after the inauguration of the newly-elected President of the Russian Federation or after the resignation of the Government of the Russian Federation or within one week after the rejection of the candidate by the State Duma

(3) The State Duma shall consider the candidacy of the Chairman of the Government of the Russian Federation submitted by the President of the Russian Federation within one week after the nomination

(4) After the State Duma thrice rejects candidates for Chairman of the Government of the Russian Federation nominated by the President of the Russian Federation, the President of the Russian Federation shall appoint Chairman of the Government of the Russian Federation, dissolve the State Duma and call a new election

112. (1) The Chairman of the Government of the Russian Federation shall, not later than one week after appointment, submit to the President of the Russian Federation proposals on the structures of the Federal bodies of executive power

(2) The Chairman of the Government of the Russian Federation shall propose to the President of the Russian Federation candidates for the office of Deputy Chairmen of the Government of the Russian Federation and Federal Ministers

113. The Chairman of the Government of the Russian Federation in accordance with the Constitution, Federal laws and decrees of the President of the Russian Federation shall determine the guidelines of the work of the Government of the Russian Federation and shall organize its work

114. (1) The Government of the Russian Federation shall —

a) develop and submit the Federal budget to the State Duma and ensure compliance therewith, submit a report on the execution of the Federal budget to the State Duma,

b) ensure the implementation in the Russian Federation of a uniform financial, credit and monetary policy,

c) ensure the implementation in the Russian Federation of a uniform State policy in the field of culture, science, education, health, social security and ecology,

d) manage Federal property,

e) adopt measures to ensure the country's defense, State security and the implementation of the foreign policy of the Russian Federation,

f) implement measures to ensure legality, the rights and freedoms of citizens, protect property and public law and order and control crime

g) exercise any other powers vested in it by the Constitution, Federal laws and the decrees of the President of the Russian Federation

(2) The work of the Government of the Russian Federation shall be regulated by Federal constitutional law

115. (1) On the basis of and pursuant to the Constitution, Federal laws and normative decrees of the President of the Russian Federation the Government of the Russian Federation shall issue decrees and orders and ensure their implementation thereof

(2) The decrees and orders of the Government of the Russian Federation shall be binding throughout the Russian Federation

(3) The decrees and executive orders of the Government of the Russian Federation may be repealed by the President of the Russian Federation if they contravene the Constitution, Federal laws and the decrees of the President of the Russian Federation

116. The Government of the Russian Federation shall lay down its powers before the newly-elected President of the Russian Federation

117. (1) The Government of the Russian Federation may hand in its resignation which may be accepted or rejected by the President of the Russian Federation

(2) The President of the Russian Federation may take a decision about the resignation of the Government of the Russian Federation

(3) The State Duma may express non-confidence in the Government of the Russian Federation. The non-confidence resolution shall be approved by a simple majority of deputies in the State Duma. In the event the State Duma shall again express non-confidence in the Government of the Russian Federation within three months, the President of the Russian Federation shall announce the resignation of the Government or dissolve the State Duma

(4) The Chairman of the Government of the Russian Federation may put the question of confidence in the Government of the Russian Federation before the State Duma. In the case of a non-confidence vote by the State Duma, the President shall within seven days make a decision about the resignation of the Government of the Russian Federation or about the dissolution of the State Duma and call a new election

(5) If the Government of the Russian Federation resigns or lays down its powers, it shall, following instructions by the President of the Russian Federation, continue working until the formation of a new Government of the Russian Federation

## CHAPTER 7

### JUDICIARY

118. (1) Justice in the Russian Federation shall be administered only by law courts

(2) Judiciary power shall be exercised to constitutional civil, administrative and criminal process

(3) The judiciary system of the Russian Federation shall be established by the Constitution and the Federal constitutional law. The creation of extraordinary courts shall be forbidden

119. Citizens of the Russian Federation aged 25 and older, holding a law degree and having worked in the law profession for at least five years may become Judges. The Federal law may establish additional requirements for Judges in the courts of the Russian Federation.

120. (1) Judges shall be independent and shall obey only the Constitution and the Federal law.

(2) A court of law, having established the illegality of an act of Government or any other body, shall pass a ruling in accordance with law.

121. (1) Judges may not be replaced.

(2) A Judge may not have his powers terminated or suspended except under procedures and on grounds established by Federal law.

122. (1) Judges shall possess immunity.

(2) Criminal proceedings may not be brought against a Judge except as provided for by Federal law.

123. (1) All trials in all law courts shall be open. The hearing of a case can be in camera in cases provided by the Federal law.

(2) Hearing of criminal cases in law courts in absentia shall not be allowed except the cases provided for by the Federal law.

(3) The trial shall be conducted on an adversarial and equal basis.

(4) In cases stipulated by Federal law trials shall be held by jury.

124. Law courts shall be financed only out of the Federal budget and financing shall ensure full and independent administration of justice in accordance with Federal law.

125. (1) The Constitutional Court of the Russian Federation consists of 19 Judges.

(2) The Constitutional Court of the Russian Federation on request by the President of the Russian Federation, the State Duma, one-fifth of the members of the Federation Council or deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and Supreme Arbitration Court of the Russian Federation, bodies of legislative and executive power of subjects of the Russian Federation shall resolve cases about compliance with the Constitution of —

a) Federal laws, normative Acts of the President of the Russian Federation, the Federation Council, State Duma and the Government of the Russian Federation,

b) republican Constitutions, Charters, as well as laws and other normative Acts of subjects of the Russian Federation published on issues pertaining to the jurisdiction of bodies of State power of the Russian Federation and joint jurisdiction of bodies of State power of the Russian Federation and bodies of State power of subjects of the Russian Federation,

c) agreements between bodies of State power of the Russian Federation and bodies of State power of subjects of the Russian

Federation, agreements between bodies of State power of subjects of the Russian Federation,

d) international agreements of the Russian Federation that have not entered into force

(3) The Constitutional Court of the Russian Federation shall resolve disputes over jurisdiction —

a) between the Federal State bodies,

b) between State bodies of the Russian Federation and State bodies of the subjects of the Russian Federation,

c) between supreme State bodies of subjects of the Russian Federation

(4) The Constitutional Court of the Russian Federation, proceeding from complaints about violation of constitutional rights and freedoms of citizens and requests from courts shall review the constitutionality of the law applied or due to be applied in a specific case in accordance with procedures established by Federal law

(5) The Constitutional Court of the Russian Federation on request by the President of the Russian Federation, the Federation Council, State Duma, the Government of the Russian Federation, legislative bodies of subjects of the Russian Federation shall interpret the Constitution

(6) Acts and their provisions deemed unconstitutional shall lose force thereof, international agreements of the Russian Federation may not be enforced and applied if they violate the Constitution

(7) The Constitutional Court of the Russian Federation on request of the Federation Council shall rule on compliance with established procedures when charging the President of the Russian Federation with State treason or other grave crime

126 The Supreme Court of the Russian Federation shall be the highest judiciary body on civil, criminal, administrative and other matters triable by general jurisdiction courts, and shall effect judiciary supervision over their activity in line with Federal procedural forms and shall offer explanations on judicial practice issues

127. The Supreme Arbitration Court of the Russian Federation shall be the highest judiciary body resolving economic disputes and other cases considered by arbitration courts, and shall carry out judicial supervision over their activity in line with Federal legal procedures and shall offer explanations on questions of judiciary practice

128 (1) Judges of the Constitutional Court of the Russian Federation, of the Supreme Court of the Russian Federation, of the Supreme Arbitration Court of the Russian Federation shall be appointed by the Federation Council following nomination by the President of the Russian Federation

(2) Judges of other Federal courts shall be appointed by the President of the Russian Federation in accordance with procedures established by Federal law

(3) The powers, and procedure of the formation and activities of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation and other Federal courts shall be established by Federal constitutional law

129. (1) The Prosecutor's Office of the Russian Federation is a single centralized system in which lower prosecutors are subordinated to higher prosecutors and the Prosecutor-General of the Russian Federation

(2) The Prosecutor-General of the Russian Federation shall be appointed to his post and relieved from the post by the Federation Council on nomination by the President of the Russian Federation

(3) Prosecutors of subjects of the Russian Federation shall be appointed by the Prosecutor-General of the Russian Federation after consultations with its subjects

(4) Other prosecutors shall be appointed by the Prosecutor-General of the Russian Federation

(5) The powers, organization and working procedure for the Prosecutor's Office of the Russian Federation shall be determined by Federal law

## CHAPTER 8

### LOCAL SELF-GOVERNMENT

130. (1) Local self-Government in the Russian Federation shall ensure independent solution by the population of local issues, the ownership, use and disposal of municipal property

(2) Local self-Government shall be exercised by the citizens through referendums, elections and forms of expression of their will, through elected and other bodies of local self-government

131. (1) Local self-Government shall be exercised in the cities, rural areas and other localities taking into account historical and other local traditions. The structure of bodies of local self-Government shall be determined by the population independently

(2) The borders of territorial entities under local self-Government shall be changed only with the consent of their population

132. (1) The bodies of local self-Government shall independently manage municipal property, form, approve and execute the local budget, establish local taxes and levies, ensure law and order and solve any other local issues

(2) The bodies of local self-Government may be invested under law with certain State powers with the transfer of material and financial resources required to exercise such powers. The exercise of the powers transferred shall be supervised by the State

133. Local self-Government in the Russian Federation shall be guaranteed by the right to judicial protection and compensation for any additional expenses arising from the decisions passed by the bodies of State power, and the ban on the restrictions of the rights of local self-Government established by the Constitution and Federal laws

## CHAPTER 9 CONSTITUTIONAL AMENDMENTS AND REVISIONS

134. Proposals on amendments and revision of constitutional provisions may be made by the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, legislative (representative) bodies of the subjects of the Russian Federation as well as groups of deputies numbering not less than one-fifth of the total number of deputies of the Federation Council or the State Duma

135 (1) The provisions of Chapters 1, 2 and 9 of the Constitution may not be revised by the Federal Assembly

(2) In the event a proposal to revise any provisions in Chapters 1 and 9 of the Constitution shall be supported by three-fifths of the total number of deputies of the Federation Council and the State Duma, a Constitutional Assembly shall be convened in accordance with the Federal constitutional law

(3) The Constitutional Assembly may either confirm the inviolability of the Constitution or develop a new draft of the Constitution which shall be adopted by two-thirds of the total number of deputies to the Constitutional Assembly or submitted to popular voting. The Constitution shall be considered and adopted during such poll if more than half of its participants have voted for it, provided more than half of the electorate have taken part in the poll

136. Amendments to Chapters 3 to 8 of the Constitution shall be adopted in accordance with the procedures envisaged for the adoption of a Federal constitutional law and shall come into force following the approval thereof by no less than two-thirds of the subjects of the Russian Federation

137. (1) Changes to Article 65 of the Constitution which determines the composition of the Russian Federation, shall be made on the basis of the Federal constitutional law on admission to the Russian Federation and the formation within the Russian Federation of a new subject and on a change of the constitutional-legal status of the subject of the Russian Federation

(2) In the event of a change in the name of the Republic, territory, region, Federal cities, autonomous region and autonomous area, the new name of the subject of the Russian Federation shall be included in Article 65 of the Constitution

## CHAPTER 10

## CONCLUDING AND TRANSITIONAL PROVISIONS

1. (1) The Constitution comes into force from the day of its official publication on the basis of the results of a nationwide vote.

(2) The election day, December 12, 1993 is considered the day of adoption of the Constitution

(3) Simultaneously, the Constitution (Fundamental Law) of the Russian Federation-Russia, adopted 12 April 1978, with the changes and amendments that followed, ceases to be valid.

(4) In the event of a situation of nonconformity between the Constitution and the Federal Treaty - the Agreement on the Delineation of Jurisdiction and Powers between the Federal Bodies of State Power of the Russian Federation and the Bodies of State Power of the Sovereign Republics making up the Russian Federation, the Agreement on the Delineation of Jurisdiction and Powers between the Federal Bodies of State Power of the Russian Federation and Bodies of State Power of the territories regions the cities of Moscow and St Petersburg of the Russian Federation, the Agreement on the Delineation of Jurisdiction and Powers between the Federal Bodies of State Power of the Russian Federation and Bodies of State power of the autonomous region, autonomous areas making up the Russian Federation, and similarly other agreements between the Federal Bodies of State Power of the Russian Federation and Bodies of State Power of the subjects of the Russian Federation, agreements between Bodies of State Power of the subjects of the Russian Federation, the provisions of the Constitution shall apply.

2 Laws and other legal Acts in effect on the territory of the Russian Federation until the enactment of this Constitution are enforced in so far as they do not contravene the Constitution

3. The President of the Russian Federation, elected in accordance with the Constitution (Fundamental Law) of the Russian Federation - Russia from the day this Constitution takes effect exercises the powers set down in the Constitution until the end of his term for which he was elected

4. The Council of Ministers - the Government of the Russian Federation from the day this Constitution takes effect assumes the rights duties and responsibilities of the Government of the Russian Federation set down in the Constitution and in future shall be designated as the Government of the Russian Federation

5. (1) Courts in the Russian Federation exercise the right to administer justice in accordance with their powers as set down in this Constitution.

(2) After the Constitution takes effect the judges of all courts of the Russian Federation preserve their powers until the end of their terms for which they were elected. Vacancies shall be filled in accordance with the procedures set down in this Constitution

6. (1) Until the adoption of a Federal law setting forth the procedures for trial by jury, the prior procedure for conducting trials shall be retained

(2) Until the enforcement of criminal-procedural legislation of the Russian Federation in accordance with the provisions of this Constitution, the prior procedures of the arrest, custody and detention of individuals suspected of committing crimes shall be maintained

7. The Federal Council and the State Duma of the first convocation shall be elected for a two-year term

8 The Federation Council shall hold its first session on the 30th day after election The first session of the Federation Council shall be opened by the President of the Russian Federation

9 (1) A deputy of the State Duma of the first convocation may simultaneously be a member of the Government of the Russian Federation Deputies of the State Duma - members of the Government of the Russian Federation - are not covered by the provisions of this Constitution concerning deputies' immunity from responsibility for their activities (or their lack of activity) connected with the execution of their official duties

(2) Deputies of the Federation Council of the first convocation shall exercise their powers on a temporary basis

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# 30

## CONSTITUTION OF KINGDOM OF SAUDI ARABIA

{Adopted on March 1992 }

{Adopted by Royal decree of King Fahd}

### CHAPTER 1

#### GENERAL PRINCIPLES

1. The Kingdom of Saudi Arabia is a sovereign Arab Islamic State with Islam as its religion, God's Book and the Sunnah of His Prophet God's prayers and peace be upon him, are its Constitution, Arabic is its language and Riyadh is its capital.

2. The State's public holidays are Id al-Fitr and Id al-Adha Its calendar is the Hegira calendar.

3. The State's flag shall be as follows

(a) It shall be green

(b) Its width shall be equal to two-thirds of its length

(c) The words "There is but one God and Mohammed is His Prophet" shall be inscribed in the center with a drawn sword under it The statute shall define the rules pertaining to it

4. The State's emblem shall consist of two crossed swords with a palm tree in the upper space between them The statute shall define the State's anthem and its medals

## CHAPTER 2 MONARCHY

5. (a) The system of Government in the Kingdom of Saudi Arabia is that of a monarchy

(b) Rule passes to the sons of the founding King, Abd al-Aziz Bin Abd al-Rahman al-Faysal Al Sa'ud, and to their children's children. The most upright among them is to receive allegiance in accordance with the principles of the Holy Koran and the Tradition of the Venerable Prophet

(c) The King chooses the Heir Apparent and relieves him of his duties by Royal order

(d) The Heir Apparent is to devote his time to his duties as an Heir Apparent and to whatever missions the King entrusts him with.

(e) The Heir Apparent takes over the powers of the King on the latter's death until the act of allegiance has been carried out

6. Citizens are to pay allegiance to the King in accordance with the holy Koran and the tradition of the Prophet, in submission and obedience, in times of ease and difficulty, fortune and adversity

7. Government in Saudi Arabia derives power from the Holy Koran and the Prophet's tradition

8. Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari'ah

## CHAPTER 3 FEATURES OF THE SAUDI FAMILY

9. The family is the kernel of Saudi society, and its members shall be brought up on the basis of the Islamic faith, and loyalty and obedience to God, His Messenger, and to guardians, respect for and implementation of the law, and love of and pride in the homeland and its glorious history as the Islamic faith stipulates

10. The State will aspire to strengthen family ties, maintain its Arab and Islamic values and care for all its members, and to provide the right conditions for the growth of their resources and capabilities

11. Saudi society will be based on the principle of adherence to God's command, on mutual cooperation in good deeds and piety and mutual support and inseparability

12. The consolidation of national unity is a duty, and the State will prevent anything that may lead to disunity, sedition and separation

13. Education will aim at instilling the Islamic faith in the younger generation providing its members with knowledge and skills and preparing them to become useful members in the building of their society. members will love their homeland and are proud of its history.

## CHAPTER 4

## ECONOMIC PRINCIPLES

14. All God's bestowed wealth, be it under the ground, on the surface or in national territorial waters, in the land or maritime domains under the State's control, are the property of the State as defined by law. The law defines means of exploiting, protecting, and developing such wealth in the interests of the State, its security and economy.

15. No privilege is to be granted and no public resource is to be exploited without a law.

16. Public money is sacrosanct. The State has an obligation to protect it and both citizens and residents are to safeguard it.

17. Property, capital, and labour are essential elements in the Kingdom's economic and social being. They are personal rights which perform a social function in accordance with Islamic Shari'ah.

18. The State protects freedom of private property and its sanctity. No one is to be stripped of his property except when it serves the public interest, in which case fair compensation is due.

19. Public confiscation of money is prohibited and the penalty of private confiscation is to be imposed only by a legal order.

20. Taxes and fees are to be imposed on a basis of justice and only when the need for them arises. Imposition, amendment, revocation and exemption is only permitted by law.

21. Alms tax is to be levied and paid to legitimate recipients.

22. Economic and social development is to be achieved according to a just and scientific plan.

## CHAPTER 5

## RIGHTS AND DUTIES

## 23. Islam

The State protects Islam, it implements its Shari'ah, it orders people to do right and shun evil, it fulfills the duty regarding God's call.

## 24. Holy Places

The State works to construct and serve the Holy Places. It provides security and care for those who come to perform the pilgrimage and minor pilgrimage in them through the provision of facilities and peace.

## 25. World Peace

The State strives for the achievement of the hopes of the Arab and Islamic nation for solidarity and unity of word, and to consolidate its relations with friendly States.

## 26. Human Rights

The State protects human rights in accordance with the Islamic Shari'ah.

**27. Welfare Rights**

The State guarantees the rights of the citizen and his family in cases of emergency, illness and disability, and in old age, it supports the system of social security and encourages institutions and individuals to contribute in acts of charity

**28. Work**

The State provides job opportunities for whoever is capable of working, it enacts laws that protect the employee and employer

**29. Science, Culture**

The State safeguards science, literature and culture, it encourages scientific research, it protects the Islamic and Arab heritage and contributes toward the Arab, Islamic and human civilization

**30. Education**

The State provides public education and pledges to combat illiteracy

**31. Health Care**

The State takes care of health issues and provides health care for each citizen

**32. Environment, Nature**

The State works for the preservation, protection, and improvement of the environment, and for the prevention of pollution

**33. Armed Forces**

The State establishes and equips the Armed Forces for the defence of the Islamic religion, the Two Holy Places, society, and the citizen

**34. Military Service**

The defence of the Islamic religion, society, and country is a duty for each citizen. The regime establishes the provisions of military service

**35. Citizenship**

The statutes define the Regulations governing Saudi Arabian nationality

**36. Arrest**

The State provides security for all its citizens and all residents within its territory and no one shall be arrested, imprisoned or have their actions restricted except in cases specified by statutes

**37. Home**

The home is sacrosanct and shall not be entered without the permission of the owner or be searched except in cases specified by statutes

**38. Punishment, nulla poena**

Penalties shall be personal and there shall be no crime or penalty except in accordance with the Shari'ah or organizational law. There shall be no

punishment except for acts committed subsequent to the coming into force of the organizational law.

### 39. Expression

Information, publication, and all other media shall employ courteous language and the State's regulations and they shall contribute to the education of the nation and the bolstering of its unity. All acts that foster sedition or division or harm the State's security and its public relations or detract from man's dignity and rights shall be prohibited. The statutes shall define all that.

### 40. Communication

Telegraphic, postal, telephone, and other means of communications shall be safeguarded. They cannot be confiscated, delayed, read or listened to except in cases defined by statutes.

### 41. Residents' Duties

Residents of the Kingdom of Saudi Arabia shall abide by its laws and shall observe the values of Saudi society and respect its traditions and feelings

### 42. Asylum, Extradition

The State shall grant the right to political asylum when the public interest demands this. Statutes and international agreements shall define the rules and procedures governing the extradition of common criminals

### 43. Royal Courts

The King's Court and that of the Crown Prince shall be open to all citizens and to anyone who has a complaint or a plea against an injustice. Every individual shall have a right to address the public authorities in all matters affecting him.

## CHAPTER 6

### THE AUTHORITIES OF THE STATE

#### 44. The authorities of the State consist of the following:

- the judicial authority.
- the executive authority.
- the regulatory authority.

These authorities cooperate with each other in the performance of their duties in accordance with this and other laws. The King shall be the point of reference for all these authorities

45. The source of the deliverance of fatwa in the Kingdom of Saudi Arabia are God's Book and the Sunnah of His Messenger. The law will define the composition of the senior ulema body, the administration of scientific research, deliverance of fatwa and its (the body of senior ulema's) functions

46. The judiciary is an independent authority. There is no control over Judges in the dispensation of their judgements except in the case of the Islamic Shari'ah

47. The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis. The law defines the required procedures for this.

48. The courts will apply the rules of the Islamic Shari'ah in the cases that are brought before them, in accordance with what is indicated in the Book and the Sunnah, and statutes decreed by the Ruler which do not contradict the Book or the Sunnah.

49. Observing what is Stated in Article 53, the courts shall arbitrate in all disputes and crimes.

50. The King, or whoever deputizes for him, is responsible for the implementation of judicial rulings.

51. The authorities establish the formation of the Higher Council of Justice and its prerogatives, they also establish the seniority of the courts and their prerogatives.

52. The appointment of Judges and the termination of their duties is carried out by Royal decree by a proposal from the Higher Council of Justice in accordance with the provisions of the law.

53. The law establishes the seniority of the tribunal of complaints and its prerogatives.

54. The law establishes the relationship between the investigative body and the Prosecutor-General, and their organization and prerogatives.

55. The King carries out the policy of the nation, a legitimate policy in accordance with the provisions of Islam, the King oversees the implementation of the Islamic Shari'ah, the system of Government, the State's general policies, and the protection and defence of the country.

56. The King is the head of the Council of Ministers, he is assisted in carrying out his duties by members of the Council of Ministers, in accordance with the provisions of this and other laws. The Council of Ministers establishes the prerogatives of the Council regarding internal and external affairs, the organization of and co-ordination between Government bodies. It also establishes requirements to be fulfilled by Ministers, their prerogatives, the manner of their questioning and all issues concerning them. The law on the Council of Ministers and its prerogatives is to be amended in accordance with this law.

57. (a) The King appoints and relieves Deputies of the Prime Minister and ministers and members of the Council of Ministers by Royal decree.

(b) The Deputies of the Prime Minister and Ministers of the Council of Ministers are responsible, by expressing solidarity before the King for implementing the Islamic Shari'ah and the State's general policy.

(c) The King has the right to dissolve and reorganize the Council of Ministers.

58. The King appoints those who enjoy the rank of Ministers, Deputy Ministers and those of higher rank, and relieves them of their posts by Royal decree in accordance with the explanations included in the law. Ministers and Heads of independent departments are responsible before the Prime Minister for the Ministries and departments which they supervise.

59. The law defines the rules of the civil service, including salaries, awards, compensations, favours and pensions

60. The King is the Commander-in-Chief of all the armed forces. He appoints officers and puts an end to their duties in accordance with the law

61. The King declares a State of emergency, general mobilization and war, and the law defines the rules for this.

62. If there is a danger threatening the safety of the Kingdom or its territorial integrity, or the security of its people and its interests, or which impedes the functioning of the State institutions, the King may take urgent measures in order to deal with this danger and if the King considers that these measures should continue, he may then implement the necessary regulations to this end

63. The King receives Kings and Heads of State. He appoints his representatives to States, and he receives the credentials of State representatives accredited to him.

64. The King awards medals, as defined by regulations

65. The King may delegate prerogatives to the Crown Prince by Royal decree

66. In the event of his travelling abroad, the King issues a Royal decree delegating to the Crown Prince the management of the affairs of State and looking after the interests of the people, as defined by the Royal decree

67. The regulatory authority lays down regulations and motions to meet the interests of the State or remove what is bad in its affairs, in accordance with the Islamic Shari'ah. This authority exercises its functions in accordance with this law and the laws pertaining to the Council of Ministers and the Consultative Council.

68. A Consultative Council is to be created. Its statute will specify how it is formed, how it exercises its powers and how its members are selected

69. The King has the right to convene the Consultative Council and the Council of Ministers for a joint meeting and to invite whoever he wishes to attend that meeting to discuss whatever matters he wishes

70. International treaties, agreements, regulations and concessions are approved and amended by Royal decree

71. Statutes are to be published in the Official Gazette and take effect from the date of publication unless another date is specified

## *CHAPTER 7*

### **FINANCIAL AFFAIRS**

72. (a) The statute explains the provisions concerning the State's revenue and its entry in the State's General Budget

(b) Revenue is entered and spent in accordance with the rules specified in the statute

73. Any undertaking to pay a sum of money from the General Budget must be made in accordance with the provisions of the Budget. If it is not possible to do so in accordance with the provisions of the Budget, then it must be done in accordance with Royal decree

74. The sale, renting or use of State assets is not permitted except in accordance with the statute.

75. The statutes will define the monetary and banking provisions, the standards, weights and measures

76. The law will fix the State's financial year and will announce the budget by way of a Royal decree. It will also assess the revenues and expenditure of that year at least one month before the start of the financial year. If, for essential reasons, the Budget is not announced and the new financial year starts, the Budget of the previous year will remain in force until the new Budget is announced.

77. The competent body will prepare the State's Final Statement of Account for the passing year and will submit it to the head of the Council of Ministers.

78. The same provisions will apply both to the Budgets of the corporate bodies and their Final Statements of Account and to the State's Budget and its Final Statement of Account.

## CHAPTER 8 CONTROL BODIES

79. All the State's revenues and expenditures will come under subsequent control and all the State's movable and immovable funds will be controlled in order to confirm the good use of these funds and their preservation. An annual report will be submitted on this matter to the head of the Council of Ministers. The law will define the competent control body and its obligations and prerogatives.

80. Government bodies will come under control in order to confirm the good performance of the administration and the implementation of the statutes. Financial and administrative offenses will be investigated and an annual report will be submitted on this matter to the head of the Council of Ministers. The law will define the competent body in charge of this and its obligations and prerogatives.

## CHAPTER 9 GENERAL PROVISIONS

81. The implementation of this law will not prejudice the treaties and agreements signed by the Kingdom of Saudi Arabia with international bodies and organizations.

82. Without violating the content of Article 7, no provision of this law, whatever may be, suspended unless it is temporary such as in a time of war or during the declaration of a State of emergency. This temporary suspension will be in accordance with the terms of the law.

83. This law may only be amended in the same way as it was promulgated.

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# 31

## CONSTITUTION OF SINGAPORE

{Adopted on: 16 Sep 1963}

### *PART I* **PRELIMINARY**

#### **1. Citation**

This Constitution may be cited as the Constitution of the Republic of Singapore

#### **2. Interpretation**

(1) In this Constitution, unless it is otherwise provided or the context otherwise requires,

- "Cabinet" means the Cabinet constituted under this Constitution.
- "Civil List" means the provision made under Article 22j for the maintenance of the President;
- "citizen of Singapore" means any person who, under the provisions of this Constitution, has the status of a citizen of Singapore,
- "commencement", used with reference to this Constitution, means the day on which this Constitution comes into operation,
- "Consolidated Fund" means the Consolidated Fund established by this Constitution,
- "Council of Presidential Advisers" means the Council of Presidential Advisers constituted under Part V,
- "existing law" means any law having effect as part of the law of Singapore immediately before the commencement of this Constitution
- "Government" means the Government of Singapore

— "Judge of the Supreme Court" includes the Chief Justice, a Judge of Appeal, and a Judge of the High Court,

— "law" includes written law and any legislation of the United Kingdom or other enactment or instrument whatsoever which is in operation in Singapore and the common law in so far as it is in operation in Singapore and any custom or usage having the force of law in Singapore,

— "Legal Service Commission" means the Legal Service Commission constituted under this Constitution,

— "Legislature" means the Legislature of Singapore,

— "Minister" means a Minister appointed under this Constitution,

— "office of profit" means, subject to clause (5), any whole time office in the public service,

— "Parliament" means the Parliament of Singapore,

— "President" means the President of Singapore elected under this Constitution and includes any person for the time being exercising the functions of the office of President,

— "Presidential Elections Committee" means the Presidential Elections Committee constituted under Article 18,

— "Prime Minister" means the Prime Minister of Singapore appointed under this Constitution,

— "public office" means, subject to clause (5), an office of emolument in the public service,

— "public officer" means the holder of any public office,

— "public seal" means the public seal of Singapore,

— "public service" means service under the Government,

— "Public Service Commission" means the Public Service Commission constituted under this Constitution,

— "register of electors" means any register of electors prepared under the provisions of any written law for the time being in force relating to Parliamentary elections,

— "remuneration", in respect of any public officer, means only the emoluments of that officer, the whole or any part of which count for pension in accordance with the provisions of any law relating to the grant of pensions in respect of the public service,

— "reserves", in relation to the Government, a statutory board or Government company, means the excess of assets over liabilities of the Government, statutory board or Government company, as the case may be,

— "session" means the sittings of Parliament commencing when it first meets after being constituted, or after its prorogation or dissolution at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued,

— "Singapore" means the Republic of Singapore,

— "sitting" means a period during which Parliament is sitting continuously without adjournment, including any period during which Parliament is in committee;

— "Speaker" and "Deputy Speaker" mean, respectively, the Speaker and a Deputy Speaker of Parliament;

— "term of office", in relation to the Government, means the period

(a) commencing on the date the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 2<sup>o</sup> after a general election; and

(b) ending after the next general election on the date immediately before the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 27;

— "terms of service", in respect of any officer, includes the remuneration to which that officer is entitled by virtue of his office, and any pension, gratuity or other like allowance payable to or in respect of that officer;

— "written law" means this Constitution and all Acts and Ordinances and subsidiary legislation for the time being in force in Singapore.

(2) Except where this Constitution otherwise provides or where the context otherwise requires

(a) the person or authority having power to make substantive appointments to any public office may appoint a person to perform the functions of that office during any period when it is vacant or when the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions

(b) every appointment to perform the functions of an office made under paragraph (a) shall be made in the same manner as and subject to the same conditions as apply to a substantive appointment to that office;

(c) any reference in this Constitution to the holder of any office by the term designating his office shall be construed as including a reference to any person for the time being lawfully performing the functions of that office; and

(d) any reference in this Constitution to an appointment to any office shall be construed as including a reference to an appointment to perform the functions of that office.

(3) Where in this Constitution power is conferred on any person or authority to appoint a person to perform the functions of any office if the holder thereof is unable himself to perform its functions, any such appointment shall not be called in question on the ground that the holder of that office was not unable to perform those functions.

(4) For the purposes of this Constitution, the resignation of a member of any body or the holder of any office constituted by this Constitution that is required to be addressed to any person shall be deemed to have effect from the time that it is received by that person. Provided that, in the case of a resignation that is required to be addressed to the Speaker, the resignation

shall, if the office of Speaker is vacant or the Speaker is absent from Singapore, be deemed to have effect from the time that it is received by a Deputy Speaker on behalf of the Speaker

(5) For the purposes of this Constitution, a person shall not be considered as holding a public office or an office of profit by reason of the fact that he is in receipt of any remuneration or allowances (including a pension or other like allowance) in respect of his tenure of the office of President, Prime Minister, Chief Justice, Speaker, Deputy Speaker, Minister, Parliamentary Secretary, Political Secretary, Member of Parliament, Ambassador, High Commissioner or such other office as the President may, from time to time, by order, prescribe

(6)(a) Without prejudice to clause (2) when the holder of any public office is on leave of absence pending relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person thereto

(b) Where two or more persons are holding the same office by reason of an appointment made pursuant to paragraph (a), the person last appointed shall, in respect of any function conferred on the holder of that office, be deemed to be the sole holder of that office

(7) Where a person is required by this Constitution to take an oath, he shall be permitted, if he so desires, to comply with that requirement by making an affirmation

(8) References in this Constitution to any period shall, so far as the context admits, be construed as including references to a period beginning before the commencement of this Constitution

(9) Subject to this article, the Interpretation Act shall apply for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to any written law within the meaning of that Act

(10) Unless the context otherwise requires, any reference in this Constitution to a specified Part, Article, or Schedule is a reference to that Part or Article of, or that Schedule to, this Constitution, any reference to a specified chapter, clause, section or paragraph is a reference to that chapter of the Part, that clause of the Article, that section of the Schedule, or that paragraph of the clause or section, in which the reference occurs, and any reference to a group of Articles, sections or divisions of Articles or sections shall be construed as including both the first and the last member of the group referred to

## PART II

### THE REPUBLIC AND THE CONSTITUTION

#### 3 Republic of Singapore

Singapore shall be a sovereign republic to be known as the Republic of Singapore

#### 4. Supremacy of the Constitution

This Constitution is the supreme law of the Republic of Singapore and any law enacted by the Legislature after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void

#### 5. Amendment of the Constitution

(1) Subject to this article and Article 8, the provisions of this Constitution may be amended by a law enacted by the Legislature

(2) A Bill seeking to amend any provision in this Constitution shall not be passed by Parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of the elected Members of Parliament referred to in Article 39 (1)(a)

(2a) Unless the President, acting in his discretion, otherwise directs the Speaker in writing, a Bill seeking to amend this clause, Articles 17 to 22, 22a to 22o, 35, 65, 66, 69, 70, 93a, 94, 95, 105, 107, 110a, 110b, 151 or any provision in Part IV or XI shall not be passed by Parliament unless it has been supported at a national referendum by not less than two-thirds of the total number of votes cast by the electors registered under the Parliamentary Elections Act

(3) In this article, "amendment" includes addition and repeal

### PART III

## PROTECTION OF THE SOVEREIGNTY

#### 6. No Surrender of Sovereignty

(1) There shall be—

(a) no surrender or transfer, either wholly or in part, of the sovereignty of the Republic of Singapore as an independent nation, whether by way of merger or incorporation with any other sovereign state or with any Federation, Confederation, country or territory or in any other manner whatsoever, and

(b) no relinquishment of control over the Singapore Police Force or the Singapore Armed Forces, unless such surrender, transfer or relinquishment has been supported, at a national referendum, by not less than two-thirds of the total number of votes cast by the electors registered under the Parliamentary Elections Act

(2) For the purposes of this article—

"Singapore Armed Forces" means the Singapore Armed Forces raised and maintained under the Singapore Armed Forces Act, and includes any civil defence force formed under the Civil Defence Act and such other force as the President may, by notification in the Gazette, declare to be an armed force for the purposes of this article,

"Singapore Police Force" means the Singapore Police Force and the Special Constabulary established under the Police Force Act and any Auxiliary Police Force created in accordance with Part X of that Act, and

includes the Vigilante Corps established under the Vigilante Corps Act and such other force as the President may, by notification in the Gazette, declare to be a police force for the purposes of this article

#### 7. Participation in Co-operative International Schemes

Without in any way derogating from the force and effect of Article 6, nothing in that Article shall be construed as precluding Singapore or any association, body or organization therein from—

(a) participating or co-operating in, or contributing towards, any scheme, venture, project, enterprise or undertaking of whatsoever nature, in conjunction or in concert with any other sovereign State or with any Federation, Confederation, country or countries or any association, body or organization therein, where such scheme, venture, project, enterprise or undertaking confers, has the effect of conferring or is intended to confer, on Singapore or any association, body or organization therein, any economic, financial, industrial, social, cultural educational or other benefit of any kind or is, or appears to be, advantageous in any way to Singapore or any association body or organization therein, or

(b) entering into any treaty, agreement, contract, pact or other arrangement with any other sovereign State or with any Federation, Confederation, country or countries or any association body or organization therein, where such treaty, agreement, contract pact or arrangement provides for mutual or collective security or any other object or purpose whatsoever which is, or appears to be, beneficial or advantageous to Singapore in any way.

#### 8 Amendments by Two-thirds Majority

(1) A Bill for making an amendment to this Part shall not be passed by Parliament unless it has been supported, at a national referendum, by not less than two-thirds of the total number of votes cast by the electors registered under the Parliamentary Elections Act

(2) In this article, "amendment" includes addition and repeal

### PART IV FUNDAMENTAL LIBERTIES

#### 9 Liberty of the Person

(1) No person shall be deprived of his life or personal liberty save in accordance with law

(2) Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained the Court shall inquire into the complaint and unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him

(3) Where a person is arrested he shall be informed as soon as possible of the grounds of his arrest and shall be allowed to consult and be

(4) Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a magistrate and shall not be further detained in custody without the magistrate's authority

(5) Clauses (3) and (4) shall not apply to an enemy alien or to any person arrested for contempt of Parliament pursuant to a warrant issued under the hand of the Speaker

(6) Nothing in this article shall invalidate any law—

(a) in force before 16 September 1963 which authorizes the arrest and detention of any person in the interests of public safety, peace and good order, or

(b) relating to the misuse of drugs or intoxicating substances which authorizes the arrest and detention of any person for the purpose of treatment and rehabilitation, by reason of such law being inconsistent with clauses (3) and (4), and, in particular, nothing in this article shall affect the validity or operation of any such law before 10 March, 1978

#### **10. Slavery and Forced Labor Prohibited**

(1) No person shall be held in slavery

(2) All forms of forced labor are prohibited, but Parliament may by law provide for compulsory service for national purposes

(3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labor within the meaning of this article

#### **11. Protection Against Retrospective Criminal Laws and Repeated Trials**

(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed

(2) A person who has been convicted or acquitted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was convicted or acquitted

#### **12. Equality**

(1) All persons are equal before the law and entitled to the equal protection of the law

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding, or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment

(3) This article does not invalidate or prohibit—

(a) any provision regulating personal law, or

(b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion

### 13. Prohibition of Banishment and Freedom of Movement

(1) No citizen of Singapore shall be banished or excluded from Singapore

(2) Subject to any law relating to the security of Singapore or any part thereof, public order, public health or the punishment of offenders, every citizen of Singapore has the right to move freely throughout Singapore and to reside in any part thereof

### 14. Freedom of Speech, Assembly, and Association

(1) Subject to clauses (2) and (3)—

(a) every citizen of Singapore has the right to freedom of speech and expression ,

(b) all citizens of Singapore have the right to assemble peaceably and without arms, and

(c) all citizens of Singapore have the right to form associations

(2) Parliament may by law impose—

(a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence,

(b) on the right conferred by clause (1)(b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order, and

(c) on the right conferred by clause (1)(c), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality

(3) Restrictions on the right to form associations conferred by clause (1)(c) may also be imposed by any law relating to labor or education

### 15. Freedom of Religion

(1) Every person has the right to profess and practice his religion and to propagate it

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own

(3) Every religious group has the right—

(a) to manage its own religious affairs,

(b) to establish and maintain institutions for religious or charitable purposes, and

(c) to acquire and own property and hold and administer it in accordance with law

(4) This article does not authorize any act contrary to any general law relating to public order, public health or morality

## 16. Rights in Respect of Education

(1) Without prejudice to the generality of Article 12, there shall be no discrimination against any citizens of Singapore on the grounds only of religion, race, descent or place of birth—

(a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees, or

(b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Singapore)

(2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own

(4) For the purposes of clause (3), the religion of a person under the age of 18 years shall be decided by his parent or guardian

## PART V

## THE GOVERNMENT

### CHAPTER 1

## THE PRESIDENT

### 17. The President

(1) There shall be a President of Singapore who shall be the Head of State and shall exercise and perform such powers and functions as are conferred on the President by this Constitution and any other written law

(2) The President shall be elected by the citizens of Singapore in accordance with any law made by the Legislature

(3) Any poll for the election of President shall be held as follows

(a) in the case where the office of President becomes vacant prior to the expiration of the term of office of the incumbent and a writ for the election has not been issued before such vacation of office or, if so issued, has already been countermanded within 6 months after the date the office of President becomes vacant, or

(b) in any case not more than 3 months before the date of expiration of the term of office of the incumbent

#### 18. Presidential Elections Committee

(1) There shall be a Presidential Elections Committee whose function is to ensure that candidates for the office of President have the qualifications referred to in Paragraph (e) or (g)(iv) or both such paragraphs of Article 19 (2), as the case may be

(2) The Presidential Elections Committee shall consist of—

(a) the Chairman of the Public Service Commission;

(b) the Chairman of the Public Accountants Board established under the Accountants Act, and

(c) a member of the Presidential Council for Minority Rights nominated by the Chairman of the Council

(3) The Chairman of the Public Service Commission shall be the Chairman of the Presidential Elections Committee and if he is absent from Singapore or for any other reason unable to discharge his functions, he shall nominate a Deputy Chairman of the Public Service Commission to act on his behalf

(4) The office of the member of the Presidential Elections Committee nominated under clause (2) (c) shall become vacant if the member—

(a) dies,

(b) resigns from office by a letter in writing addressed to the Chairman of the Committee, or

(c) has his nomination revoked by the Chairman of the Presidential Council for Minority Rights, and the vacancy shall be filled by a new member nominated by the Chairman of the Presidential Council for Minority

(5) If the member of the Presidential Elections Committee referred to in clause (2) (b) or (c) is absent from Singapore or is for any other reason unable to discharge his functions, the Chairman of the Public Accountants Board or the Chairman of the Presidential Council for Minority Rights shall appoint a member of the Public Accountants Board or a member of the Presidential Council for Minority Rights, as the case may be, to act on his behalf

(6) The Presidential Elections Committee may regulate its own procedure and fix the quorum for its meetings

(7) The Presidential Elections Committee may act notwithstanding any vacancies in its membership

(8) Parliament may by law provide for the remuneration of members of the Presidential Elections Committee and the remuneration so provided shall be charged on the Consolidated Fund

(9) A decision of the Presidential Elections Committee as to whether a candidate for election to the office of President has fulfilled the requirement of Article 19 (2)(e) or (g)(iv) shall be final and shall not be subject to appeal or review in any court

### 19. Qualifications and Disabilities of President

(1) No person shall be elected as President unless he is qualified for election in accordance with the provisions of this Constitution

(2) A person shall be qualified to be elected as President if he—

- (a) is a citizen of Singapore,
- (b) is not less than 45 years of age,
- (c) possesses the qualifications specified in Article 44 (2)(c) and (d),
- (d) is not subject to any of the disqualifications specified in Article 45,
- (e) satisfies the Presidential Elections Committee that he is a person of integrity, good character and reputation,
- (f) is not a member of any political party on the date of his nomination for election, and
- (g) has for a period of not less than 3 years held office—
  - (i) as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary,
  - (ii) as chairman or chief executive officer of a statutory board to which Article 22a applies,
  - (iii) as chairman of the board of directors or chief executive officer of a company incorporated or registered under the Companies Act with a paid-up capital of at least \$100 million or its equivalent in foreign currency, or
  - (iv) in any other similar or comparable position of seniority and responsibility in any other organization or department of equivalent size or complexity in the public or private sector which, in the opinion of the Presidential Elections Committee, has given him such experience and ability in administering and managing financial affairs as to enable him to carry out effectively the functions and duties of the office of President

(3) The President shall—

- (a) not hold any other office created or recognized by this Constitution,
  - (b) not actively engage in any commercial enterprise,
  - (c) not be a member of any political party, and
  - (d) if he is a Member of Parliament, vacate his seat in Parliament
- (4) Nothing in clause (3) shall be construed as requiring any person exercising the functions of the office of President pursuant to Article 22n or 22o to—
- (a) if he is a member of any political party, resign as a member of that party, or
  - (b) vacate his seat in Parliament or any other office created or recognized by this Constitution

### 20. Term of Office

(1) The President shall hold office for a term of 6 years from the date on which he assumes office

(2) The person elected to the office of President shall assume office on the day his predecessor ceases to hold office or, if the office is vacant, on the day following his election

(3) Upon his assumption of office, the President shall take and subscribe in the presence of the Chief Justice or of another Judge of the Supreme Court the Oath of Office in the form set out in the First Schedule

#### 21. Discharge and Performance of Functions of President

(1) Except as provided by this Constitution, the President shall, in the exercise of his functions under this Constitution or any other written law, act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet

(2) The President may act in his discretion in the performance of the following functions

(a) the appointment of the Prime Minister in accordance with Article 25,

(b) the withholding of consent to a request for a dissolution of Parliament,

(c) the withholding of assent to any Bill under Article 22c, 22h, 144 (2) or 148a,

(d) the withholding of concurrence under Article 144 to any guarantee or loan to be given or raised by the Government,

(e) the withholding of concurrence and approval to the appointments and budgets of the statutory boards and Government companies to which Articles 22a and 22c, respectively, apply,

(f) the disapproval of transactions referred to in Article 22b (7), 22d (6), or 148g,

(g) the withholding of concurrence under Article 151 (4) in relation to the detention or further detention of any person under any law or ordinance made or promulgated in pursuance of Part XII,

(h) the exercise of his functions under section 12 of the Maintenance of Religious Harmony Act, and

(i) any other function the performance of which the President is authorized by this Constitution to act in his discretion

(3) The President shall consult the Council of Presidential Advisers before performing any of his functions under Articles 22, 22a (1), 22b (2) and (7), 22c (1), 22d (2) and (6), 144, 148a, 148b and 148g

(4) Except as otherwise provided in clause (3), the President may, in his discretion consult the Council of Presidential Advisers before performing any of his functions referred to in clauses (2) (c) to (i)

(5) The Legislature may by law make provision to require the President to act after consultation with, or on the recommendation of, any person or persons other than the Cabinet in the exercise of his functions other

- (a) functions exercisable in his discretion, and
- (b) functions with respect to the exercise of which provision is made in any other provision of this Constitution

## 22. Appointment of Public Office

Notwithstanding any other provision of this Constitution, the President, acting in his discretion, may refuse to make an appointment to any of the following offices or to revoke any such appointment if he does not concur with the advice or recommendation of the authority on whose advice or recommendation he is, by virtue of that other provision of this Constitution or any other written law, to act

- (a) the Chief Justice, Judges and Judicial Commissioners of the Supreme Court,

- (b) the Attorney-General,

- (c) the Chairman and members of the Presidential Council for Minority Rights,

- (d) the chairman and members of the Presidential Council for Religious Harmony constituted under the Maintenance of Religious Harmony Act.

- (e) the chairman and members of an advisory board constituted for the purposes of Article 151,

- (f) the Chairman and members of the Public Service Commission,

- (g) the Chairmen of the Education Service Commission and the Police and Civil Defence Services Commission, and the persons appointed thereto under Articles 110A (1)(c) and 110B (1)(c), respectively

- (h) the Auditor-General,

- (i) the Accountant-General,

- (j) the Chief of Defence Force,

- (k) the Chiefs of the Air Force, Army and Navy,

- (l) a member (other than an *ex-officio* member) of the Armed Forces Council established under the Singapore Armed Forces Act,

- (m) the Commissioner of Police, and

- (n) the Director of the Corrupt Practices Investigation Bureau

## 22a. Appointment of Members of Statutory Boards

(1) Notwithstanding any other provision of this Constitution—

- (a) where the President is authorized by any written law to appoint the chairman, member or chief executive officer of any statutory board to which this article applies, the President, acting in his discretion, may refuse to make any such appointment or to revoke such appointment if he does not concur with the advice or recommendation of the authority on whose advice or recommendation he is required to act, or

- (b) in any, other case, no appointment to the office of chairman, member or chief executive officer of any statutory board to which this

article applies and no revocation of such appointment shall be made by any appointing authority unless the President, acting in his discretion, concurs therewith

(2)(a) The chairman or member of a statutory board to which this article applies shall be appointed for a term not exceeding 3 years and shall be eligible for reappointment

(b) Any appointment to the office of chairman, member or chief executive officer of a statutory board under clause (1)(a) or any revocation thereof shall be void if made without the concurrence of the President

(3) This article shall apply to the statutory boards specified in Part I of the Fifth Schedule

(4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the Gazette, add any other statutory board to Part I of the Fifth Schedule, and no statutory board shall be removed from that Part by any such order

(5) No statutory board shall by order under clause (4) be added to Part I of the Fifth Schedule if the total value of the reserves of the statutory board on the date of making of such order is less than \$100 million

## **22b Budgets of Statutory Boards**

(1) Every statutory board to which Article 22a applies shall—

(a) before the commencement of its financial year, present to the President for his approval its budget for that financial year, together with a declaration by the chairman and the chief executive officer of the statutory board whether the budget when implemented is likely to draw on the reserves which were not accumulated by the statutory board during the current term of office of the Government,

(b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget, and

(c) within 6 months after the close of that financial year, present to the President—

(i) a full and particular audited statement showing the revenue received and expenditure incurred by the statutory board during that financial year,

(ii) as far as practicable, an audited statement of the assets and liabilities of the statutory board at the end of that financial year, and

(iii) a declaration by the chairman and the chief executive officer of the statutory board whether the statements referred to in subparagraphs (i) and (ii) show any drawing on the reserves not accumulated by the statutory board during the current term of office of the Government

(2) The President acting in his discretion, may refuse to approve any budget or supplementary budget of any such statutory board if, in his opinion, the budget is likely to draw on reserves which were not accumulated by the

statutory board during the current term of office of the Government, except that if he approves any such budget notwithstanding his opinion that the budget is likely to so draw on those reserves he shall cause his opinion to be published in the Gazette.

(3) Where by the first day of the financial year of such statutory board the President has not approved its budget for that financial year, the statutory board—

(a) shall, within 3 months of the first day of that financial year present to the President a revised budget for that financial year together with the declaration referred to in clause (1); and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the statutory board for the preceding financial year, and if the President does not approve the revised budget, the statutory board may during that financial year incur total expenditure not exceeding the amount provided in the approved budget of the statutory board for the preceding financial year, and the budget for the preceding financial year shall have effect as the approved budget for that financial year.

(4) Any amount expended during a financial year under clause (3) (b) shall be included in any revised budget subsequently presented to the President under that clause for that financial year.

(5) Nothing in this article shall prevent the taking of any action by the Monetary Authority of Singapore in the management of the Singapore dollar; and a certificate under the hand of the chairman of the board of directors of the Monetary Authority of Singapore shall be conclusive evidence that any action was or was not taken for such purpose.

(6) It shall be the duty of every statutory board and its chief executive officer to which this article applies to inform the President of any proposed transaction of the statutory board which is likely to draw on the reserves accumulated by the statutory board prior to the current term of office of the Government.

(7) Where pursuant to clause (6) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the proposed transaction, except that if he does not disapprove any such proposed transaction even though he is of the opinion that the proposed transaction is likely to draw on the reserves accumulated by the statutory board prior to the current term of office of the Government, the President shall cause his decision and opinion to be published in the Gazette.

(8) Where after 30 November 1991 a statutory board is specified in Part I of the Fifth Schedule pursuant to an order made under Article 22a (4) any reference in this article to the approved budget of a statutory board for the preceding financial year shall, in relation to the first-mentioned statutory board, be read as a reference to the budget for the financial year of the first-mentioned statutory board during which that order was made.

(9) For the purpose of this article, where the Minister responsible for finance undertakes in writing to add to the reserves accumulated by the Government prior to its current term of office any reserves of a statutory board which are proposed to be transferred to the Government by or under the authority of any written law or otherwise, the proposed transfer and transfer of those reserves shall have effect as follows

(a) the proposed transfer and transfer shall not be taken into account in determining whether the reserves accumulated by the statutory board prior to the current term of office of the Government are likely to be or have been drawn on, and

(b) the reserves to be transferred by the statutory board shall be deemed to form part of the reserves accumulated by the Government prior to its current term of office on the following occasions

(i) where a budget of the statutory board for any financial year provides for the proposed transfer and the budget is approved by the President under this article at beginning of that financial year, or

(ii) where a supplementary budget provides for the proposed transfer and the supplementary budget is approved by the President under this article on the date of approval by the President

#### **22c. Appointment of Directors of Government Companies**

(1) Notwithstanding the provisions of the memorandum and articles of association of the company, the appointment or removal of any person as a director or chief executive officer of any Government company to which this article applies shall not be made unless the President acting in his discretion, concurs with such appointment or removal

(2)(a) A director of a Government company to which this article applies shall be appointed for a term not exceeding 3 years and shall be eligible for reappointment

(b) Any appointment or removal of any director or chief executive officer of a Government company to which this article applies without the concurrence of the President shall be void and of no effect

(3) This article shall apply to the Government companies specified in Part II of the Fifth Schedule

(4) Subject to clause (5), the President acting in accordance with the advice of the Cabinet may, by order in the Gazette, add any other Government company to Part II of the Fifth Schedule, and no Government company shall be removed from that Part by any such order

(5) No Government company shall by order under clause (4) be added to Part II of the Fifth Schedule unless on the date of making of such order—

(a) the value of the shareholders' funds of the company attributable to the Government's interest in the company is worth \$100 million or more and

(b) it is not a subsidiary of any of the Government companies specified in Part II of the Fifth Schedule, and for the purposes of this

paragraph, "subsidiary" shall have the same meaning as in the Companies Act

## 22d. Budgets of Government Companies

(1) The board of directors of every Government company to which Article 22c applies shall—

(a) before the commencement of its financial year present to the President for his approval its budget for that financial year, together with declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the budget implemented is likely to draw on the reserves which were not accumulated by the Government company during the current term of office of the Government,

(b) present to the President for his approval every supplementary budget for its financial year together with a declaration referred to in paragraph (a) relating to such supplementary budget, and

(c) within 6 months after the close of that financial year, present to the President—

(i) a full and particular audited profit and loss account showing the revenue collected and expenditure incurred by the Government company during that financial year, and an audited balance sheet showing the assets and liabilities of the Government company at the end of that financial year, and

(ii) a declaration by the chairman of the board of directors and the chief executive officer of the Government company whether the audited profit and loss account and balance-sheet of the Government company show any drawing on the reserves not accumulated by the Government company during the current term of office of the Government

(2) The President, acting in his discretion, may disapprove the budget or supplementary budget of any such Government company if, in his opinion, the budget is likely to draw on reserves not accumulated by that company during the current term of office of the Government, except that if he approves any such budget notwithstanding his opinion that the budget is likely to so draw on those reserves, he shall cause his opinion to be published in the Gazette

(3) Where by the first day of the financial year of such Government company the President has not approved its budget for that financial year, the Government company—

(a) shall, within 3 months of the first day of that financial year, present to the President a revised budget for that financial year together with the declaration referred to in clause (1), and

(b) may, pending the decision of the President, incur expenditure not exceeding one-quarter of the amount provided in the approved budget of the Government company for the preceding financial year, and if the

President does not approve the revised budget, the Government company may during that financial year incur a total expenditure not exceeding the amount provided in the approved budget of the Government company for the preceding financial year, and the budget for the preceding financial year shall have effect as the approved budget for that financial year

(4) Any amount expended during a financial year under clause (3)(b) shall be included in any revised budget subsequently presented to the President under that clause for that financial year

(5) It shall be the duty of the board of directors and the chief executive officer of every Government company referred to in this article to inform the President of any proposed transaction of the company which is likely to draw on the reserves accumulated by the company prior to the current term of office of the Government

(6) Where pursuant to clause (5) the President has been so informed of any such proposed transaction the President, acting in his discretion, may disapprove the proposed transaction, except that if he does not disapprove any such proposed transaction even though he is of the opinion that the proposed transaction is likely to draw on the reserves accumulated by the Government company prior to the current term of office of the Government, the President shall cause his decision and opinion to be published in the Gazette

(7) Where after 30 November 1991 a Government company is specified in Part II of the Fifth Schedule pursuant to an order made under Article 22c (4), any reference in this article to the approved budget of a Government company for the preceding financial year shall, in relation to the first-mentioned Government company, be read as a reference to the budget for the financial year of the first-mentioned Government company immediately preceding the making of that order

(8) For the purpose of this article, where the Minister responsible for finance undertakes in writing to add to the reserves accumulated by the Government prior to its current term of office any reserves of a Government company which are proposed to be transferred to the Government by or under the authority of any written law or otherwise, the proposed transfer and transfer of those reserves shall have effect as follows

(a) the proposed transfer and transfer shall not be taken into account in determining whether the reserves accumulated by the Government company prior to the current term of office of the Government are likely to be or have been drawn on, and

(b) the reserves to be transferred by the Government company shall be deemed to form part of the reserves accumulated by the Government prior to its current term of office on the following occasions

(i) where a budget of the Government company for any financial year provides for the proposed transfer and the budget is approved by the President under this article at beginning of that financial year, or

(ii) where a supplementary budget of the Government company provides for the proposed transfer and the supplementary budget is approved by the President under this article on the date of approval by the President

## **22e. Moneys of the Central Provident Fund**

The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament which provides, directly or indirectly, for varying, changing or increasing the powers of the Central Provident Fund Board to invest the moneys belonging to the Central Provident Fund

## **22f. President's Access to Information**

(1) In the exercise of his functions under this Constitution, the President shall be entitled, at his request, to any information concerning—

(a) the Government which is available to the Cabinet, and

(b) any statutory board or Government company to which Article 22a or 22c, as the case may be, applies which is available to the members of the statutory board or the directors of the Government company

(2) The President may request—

(a) any Minister, or any senior officer of a Ministry or of a department of the Government, or

(b) the chief executive officer and any member of the governing board of any statutory board or the directors of any Government company to which Article 22a or 22c, as the case may be, applies, to furnish any information referred to in clause (1) concerning the reserves of the Government, the statutory board or Government company, as the case may be, and the Minister, member, officer or director concerned shall be under a duty to provide the information

## **22g. Concurrence of President for Certain Investigations**

Notwithstanding that the Prime Minister has refused to give his consent to the Director of the Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director touching upon the conduct of any person or any allegation or complaint made against any person, the Director may make such inquiries or carry out investigations into such information, allegation or complaint if the President, acting in his discretion, concurs therewith

## **22h. President May Withhold Assent to Bill Circumventing or Curtailing His Power**

(1) The President may, acting in his discretion, in writing withhold his assent to any Bill passed by Parliament (other than a Bill to which Article 5 (2a) applies) if the Bill provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon him by this Constitution

(2) If the President withholds his assent to any Bill pursuant to clause (1), the Prime Minister may refer the Bill to the High Court to determine

whether the Bill provides, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon the President by this Constitution

(3) Where the High Court determines that a Bill does not provide, directly or indirectly, for the circumvention or curtailment of the discretionary powers conferred upon the President, and

(a) no valid notice of appeal against that determination has been lodged within the time prescribed by the Rules of the Supreme Court, or

(b) where a valid notice of appeal has been lodged, the appeal has been withdrawn or dismissed,

the President shall be deemed to have assented to the Bill on the date the High Court made such a determination

#### **22i Restraining Order Under Maintenance of Religious Harmony Act**

The President, acting in his discretion, may cancel, vary, confirm or refuse to confirm a restraining order made under the Maintenance of Religious Harmony Act where the advice of the Cabinet is contrary to the recommendation of the Presidential Council for Religious Harmony

#### **22j Civil List and Personal Staff of President**

(1) The Legislature shall by law provide a Civil List for the maintenance of the President.

(2) Any person exercising the functions of the office of President pursuant to Article 22n or 22o shall, during any period in which he exercises those functions, be entitled to such remuneration as the Legislature may by law provide

(3) The Civil List for the maintenance of the President or any person exercising the functions of the office of President shall be charged on and paid out of the Consolidated Fund and shall not be diminished during the continuance in office of the President or that person

(4) Subject to clause (5), the appointment, terms of service, disciplinary control, termination of appointment and dismissal of the personal staff of the President shall be matters for the President acting in his discretion

(5) The President may, if he so desires, appoint to his personal staff such public officers as he may select, after consultation with the Prime Minister, from a list of names submitted by the Public Service Commission, and the provisions of clause (4) (except in so far as they relate to appointment) shall apply in relation to a person so appointed as respects his service on the personal staff of the President but not as respects his service as a public officer

(6) The remuneration of the personal staff of the President, other than a person appointed under clause (5), shall be paid out of the Civil List for the maintenance of the President

**22k. Immunity of President From Suit**

(1) Except as provided in clause (4), the President shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to be done by him in his official capacity

(2) No proceedings in any court in respect of anything done or omitted to be done by the President in his private capacity shall be instituted against him during his term of office

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds office as President shall not be taken into account in calculating any period of time prescribed by that law

(4) The immunity conferred by clause (1) shall not apply to—

(a) any proceedings instituted under Article 22h,

(b) any inquiry held by a tribunal pursuant to a resolution passed by Parliament under Article 22l, or

(c) any proceedings before the Election Judge under Article 93a to determine the validity of any Presidential election

**22l. Vacation of and Removal From Office of President**

(1) The office of President shall become vacant—

(a) upon the death of the President,

(b) if the President resigns his office by writing under his hand addressed to the Prime Minister,

(c) if the President is removed from office in accordance with clauses (3) to (7),

(d) if the Election Judge in the exercise of his powers under Article 93a determines that the election of the President was void and does not determine that any other person was duly elected as President, or

(e) if upon the expiration of the term of office of the incumbent the person declared elected as President fails to assume the office of President

(2) {Deleted by Amendment No 2 Act 1994 of 23 September 1994 }

(3) The Prime Minister or not less than one-quarter of the total number of the elected Members of Parliament referred to in Article 39 (1)(a) may give notice of a motion alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of—

(a) intentional violation of the Constitution,

(b) treason,

(c) misconduct or corruption involving the abuse of the powers of his office, or

(d) any offence involving fraud, dishonesty or moral turpitude, and setting out full particulars of the allegations made and seeking an inquiry and report thereon

## Articles 22m-22n]

(4) Where the motion referred to in clause (3) has been adopted by not less than half of the total number of the elected Members of Parliament referred to in Article 39 (1)(a), the Chief Justice shall appoint a tribunal to inquire into the allegations made against the President

(5) A tribunal appointed by the Chief Justice shall consist of not less than 5 Judges of the Supreme Court of whom the Chief Justice shall be one, unless he otherwise decides and such tribunal may regulate its own procedure and make rules for that purpose

(6) A tribunal shall, after due inquiry at which the President shall have the right to appear and to be heard in person or by counsel, make a report of its determination to the Speaker together with the reasons therefor

(7) Where the tribunal reports to the Speaker that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, Parliament may by a resolution passed by not less than three-quarters of the total number of the elected Members of Parliament referred to in Article 39 (1)(a) remove the President from office

#### 22m. Determination by Election Judge That President Was Not Duly Elected

(1) Where the Election Judge in the exercise of his jurisdiction under Article 93a determines

(a) that the election of the President was void and does not determine that any other person was duly elected, then, a poll for the election of the President shall be taken not later than 6 months from the date of the determination, or

(b) that any other person was duly elected as President, then, such other person shall assume the office of President forthwith after the determination

(2) Upon the Election Judge making any determination that the election of the President was void and no other person was duly elected as President, the person who immediately before such determination was exercising the functions of the office of President shall forthwith cease to exercise such functions

(3) The exercise, performance and discharge by any person of the powers, duties and functions of the office of President shall not be invalid by reason only of the fact that the Election Judge subsequently determines that the election of such person as President was void or undue

#### 22n. Persons to Exercise Functions of President

(1) If the office of President becomes vacant, the Chairman of the Council of Presidential Advisers or, if he is unavailable, the Speaker shall exercise the functions of the office of President during the period between the time the office of President becomes vacant and the assumption of office by the person declared elected as President

(2) If neither the Chairman of the Council of Presidential Advisers nor the Speaker is available, Parliament may appoint a person in accordance with clause (3) to exercise the functions of the office of President during the period referred to in clause (1)

(3) Parliament shall not appoint any person to exercise the functions of the office of President under clause (2) unless the person is qualified to be elected as President.

(4) The provisions of this Chapter relating to immunity from suits shall apply in relation to any person exercising the functions of the office of President pursuant to this article as if references to the President in those provisions were references to that person

(5) Any person required or appointed to exercise the function of the office of President pursuant to this article or Article 22o shall, before exercising those functions, take and subscribe in the presence of the Chief Justice or another Judge of the Supreme Court the Oath of Office in the form set out in the First Schedule, except that neither the Chairman of the Council of Presidential Advisers nor the Speaker shall, during his term of office as such Chairman or as Speaker, be required to take such oath more than once in respect of occasions when he is required to exercise the functions of the office of President

#### **22o. Temporary Disability of President**

(1) Subject to clause (2), if the President becomes temporarily unable, whether by reason of ill health, absence from Singapore or otherwise, to perform his functions under this Constitution or any other written law, one of the persons referred to in Article 22n shall exercise the functions of the office of President during the period of temporary disability, and the provisions of Article 22n shall apply, *mutatis mutandis*, to that person

(2) Parliament shall not appoint any person to exercise the functions of the office of President under this article unless the President agrees to that person being so appointed

(3) Clause (2) shall not apply if the President is unable for any reason to signify his agreement to a person being appointed under this article to exercise the functions of the office of President

### **CHAPTER 2**

### **THE EXECUTIVE**

#### **23. Executive Authority of Singapore**

(1) The executive authority of Singapore shall be vested in the President and exercisable subject to the provisions of this Constitution by him or by the Cabinet or any Minister authorized by the Cabinet

(2) The Legislature may by law confer executive functions on other persons

**24 Cabinet**

(1) There shall be in and for Singapore a Cabinet which shall consist of the Prime Minister and such other Ministers as may be appointed in accordance with Article 25

(2) Subject to the provisions of this Constitution, the Cabinet shall have the general direction and control of the Government and shall be collectively responsible to Parliament

**25 Appointment of Prime Minister and Ministers**

(1) The President shall appoint as Prime Minister a Member of Parliament who in his judgment is likely to command the confidence of the majority of the Members of Parliament, and shall, acting in accordance with the advice of the Prime Minister, appoint other Ministers from among the Members of Parliament. Provided that, if an appointment is made while Parliament is dissolved, a person who was a Member of the last Parliament may be appointed but shall not continue to hold office after the first sitting of the next Parliament unless he is a Member thereof

(2) Appointments under this article shall be made by the President by instrument under the public seal

**26 Tenure of Office of Prime Minister and Ministers**

(1) The President shall, by writing under the public seal, declare the office of Prime Minister vacant—

(a) if the Prime Minister resigns his office by writing under his hand addressed to the President, or

(b) if the President, acting in his discretion, is satisfied that the Prime Minister has ceased to command the confidence of a majority of the Members of Parliament.

Provided that, before declaring the office of Prime Minister vacant under this paragraph, the President shall inform the Prime Minister that he is satisfied as aforesaid, and, if the Prime Minister so requests, the President may dissolve Parliament instead of making such a declaration

(2) A Minister, other than the Prime Minister, shall vacate his office—

(a) if his appointment to that office is revoked by the President, acting in accordance with the advice of the Prime Minister, by instrument under the public seal, or

(b) if he resigns his office by writing under his hand addressed to the President

(3) A person who has vacated his office as Minister may, if qualified, be again appointed as Minister from time to time

(1)(a) Whenever the Prime Minister is ill or absent from Singapore or has been granted leave of absence from his duties under Article 32, the functions conferred on him by this Constitution shall be exercisable by any other Minister authorized by the President, by instrument under the public seal in that behalf

(b) The President may, by instrument under the public seal, revoke any authority given under this clause

(c) The powers conferred upon the President by this clause shall be exercised by him acting in his discretion, if in his opinion it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, and in any other case shall be exercised by the President in accordance with the advice of the Prime Minister

#### **27. Oath**

The Prime Minister and every other Minister shall before entering on the duties of his office, take and subscribe before the President the Oath of Allegiance and the appropriate Oath for the due execution of his office in the forms set out in the First Schedule

#### **28. Summoning of and Presiding in Cabinet**

(1) The Cabinet shall not be summoned except by the authority of the Prime Minister

(2) The Prime Minister shall, so far as is practicable, attend and preside at meetings of the Cabinet and, in his absence, such other Minister shall preside as the Prime Minister shall appoint

#### **29. Validity of Proceedings in Cabinet**

Any proceedings in the Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted therein or otherwise took part in the proceedings

#### **30. Assignment of Responsibility to Ministers**

(1) The Prime Minister may, by directions in writing—

(a) charge any Minister with responsibility for any department or subject, and

(b) revoke or vary any directions given under this clause

(2) The Prime Minister may retain in his charge any department or subject

#### **31. Parliamentary Secretaries**

(1) The President, acting in accordance with the advice of the Prime Minister, may by instrument under the public seal, appoint Parliamentary Secretaries from among the Members of Parliament to assist Ministers in the discharge of their duties and functions. Provided that, if an appointment is made while Parliament is dissolved, a person who was a Member of the last Parliament may be appointed a Parliamentary Secretary but shall not continue to hold office after the first sitting of the next Parliament unless he is a Member thereof

(2) Article 26 (2) and (3) and Article 27 shall apply to Parliamentary Secretaries as they apply to Ministers

**32 Leave of Absence for Ministers and Parliamentary Secretaries**

The President, acting in accordance with the advice of the Prime Minister, may grant leave of absence from his duties to the Prime Minister, to any other Minister and to any Parliamentary Secretary.

**33. Disabilities of Ministers and Parliamentary Secretaries**

A member of the Cabinet or Parliamentary Secretary shall not hold any office of profit and shall not actively engage in any commercial enterprise

**34. Permanent Secretaries**

(1) There shall be for each Ministry one or more Permanent Secretaries who shall be persons who are public officers

(2)(a) Appointments to the office of Permanent Secretary shall be made by the President, acting in accordance with the advice of the Prime Minister, from a list of names submitted by the Public Service Commission

(b) The responsibility for the allocation of each Permanent Secretary to a Ministry shall be vested in the Prime Minister

(3) Every Permanent Secretary shall, subject to the general direction and control of the Minister, exercise supervision over the department or departments to which he is allocated

**35. Attorney-General**

(1) The office of Attorney-General is hereby constituted and appointments thereto shall be made by the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, from among persons who are qualified for appointment as a Judge of the Supreme Court

(2) When it is necessary to make an appointment to the office of Attorney-General otherwise than by reason of the death of the holder of that office or his removal from office under clause (6), the Prime Minister shall, before tendering advice to the President under clause (1), consult the person holding the office of Attorney-General or, if that office is then vacant, the person who has last vacated it, and the Prime Minister shall, in every case, before tendering such advice, consult the Chief Justice and the Chairman of the Public Service Commission

(3) The Prime Minister shall not be obliged to consult any person under clause (2) if he is satisfied that by reason of the infirmity of body or mind of that person or for any other reason it is impracticable to do so

(4) The Attorney-General may be appointed for a specific period and, if he was so appointed, shall, subject to clause (6), vacate his office (without prejudice to his eligibility for reappointment) at the expiration of that period, but subject as aforesaid shall otherwise hold office until he attains the age of 65 years. Provided that—

(a) he may at any time resign his office by writing under his hand addressed to the President and

(b) the President, if he acting in his discretion, concurs with the advice of the Prime Minister, may permit an Attorney-General who has

attained the age of 60 years to remain in office for such fixed period as may have been agreed between the Attorney-General and the Government

(5) Nothing done by the Attorney-General shall be invalid by reason only that he has attained the age at which he is required by this article to vacate his office

(6)(a) The Attorney-General may be removed from office by the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Attorney-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice

(b) The tribunal constituted under this clause shall regulate its own procedure and may make rules for that purpose.

(7) It shall be the duty of the Attorney-General to advise the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President or the Cabinet and to discharge the functions conferred on him by or under this Constitution or any other written law.

(8) The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence

(9) In the performance of his duties, the Attorney-General shall have the right of audience in, and shall take precedence over any other person appearing before any court or tribunal in Singapore

(10) The Attorney-General shall be paid such remuneration and allowances as may from time to time be determined and such remuneration and allowances shall be charged on and paid out of the Consolidated Fund

(11) Subject to this article, the terms of service of the Attorney-General shall either—

(a) be determined by or under any law made under this Constitution, or

(b) (in so far as they are not determined by or under any such law) be determined by the President

(12) The terms of service of the Attorney-General shall not be altered to his disadvantage during his continuance in office

(13) For the purposes of clause (12), in so far as the terms of service of the Attorney-General depend upon his option, any terms for which he opts shall be taken to be more advantageous to him than any for which he might have opted

### 36. Secretary of Cabinet

(1) The President, acting in accordance with the advice of the Prime Minister, may appoint a public officer to be the Secretary to the Cabinet

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may from time to time direct.

### CHAPTER 3

## CAPACITY AS REGARDS PROPERTY, CONTRACTS, AND SUITS

### 37. Capacity of Government as Regards Property, Contracts, and Suits

(1) The Government shall have power to acquire, hold and dispose of property of any kind and to make contracts

(2) The Government may sue and be sued

### PART VA

## COUNCIL OF PRESIDENTIAL ADVISERS

### 37a Interpretation

In this Part, unless the context otherwise requires,—

— ‘Chairman’ means the Chairman of the Council,

— ‘Council’ means the Council of Presidential Advisers constituted under Article 37b,

— ‘member’ means a member of the Council and includes the Chairman

### 37b Council of Presidential Advisers

(1) There shall be a Council of Presidential Advisers which shall consist of—

(a) two members appointed by the President acting in his discretion,

(b) two members appointed by the President on the advice of the Prime Minister, and

(c) one member appointed by the President on the advice of the Chairman of the Public Service Commission

(2) The President, acting in his discretion, shall appoint one of the members of the Council as Chairman

(3) A member of the Council shall serve for a term of 6 years and shall be eligible for reappointment upon the expiry of his term of office except that in respect of the appointment of the first members under clause (1), one of the two members referred to in paragraphs (a) and (b) of that clause shall be appointed for a term of 3 years instead of 6 years

(4) During any period when the Chairman exercises the functions of the office of President under Article 22n or 22o, he shall not act as the Chairman for that period and shall not take part in the proceedings of the Council and shall not appoint—

- (a) a person to serve as a member of the Council for that period, and
- (b) a member of the Council to act as Chairman for that period

### **37c. Temporary Appointments During Incapacity of Members**

Whenever a member informs the Chairman that he is or will be incapable, for a period of 3 months or more, of taking part in the proceedings of the Council by reason of illness, absence or other cause, the Chairman shall convey the information to the President who may appoint another person to serve as a member for that period either in his discretion or, where that member was appointed under Article 37b (1)(b) or (c), on the advice of the Prime Minister or the Chairman of the Public Service Commission, as the case may be

### **37d. Qualifications of Members**

No person shall be qualified to be appointed as a member unless he—

- (a) is a citizen of Singapore,
- (b) is not less than 35 years of age,
- (c) is a resident of Singapore, and
- (d) is not liable to any of the disqualifications referred to in Article 37e

### **37e. Disqualifications of Members**

A person shall be disqualified for appointment as a member if he—

- (a) is or has been found or declared to be of unsound mind,
- (b) is insolvent or an undischarged bankrupt, or
- (c) has been convicted of an offence by a court of law in Singapore or a foreign country and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000 and has not received a free pardon. Provided that where the conviction is by a court in a foreign country, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore

### **37f. Termination of Membership**

(1) The Chairman shall vacate the office of Chairman of the Council when a newly elected President assumes office during the term of appointment of the Chairman

(2) A member shall vacate his seat in the Council—

- (a) if he ceases to be a citizen of Singapore,
- (b) if by writing under his hand addressed to the Chairman he resigns his seat, or
- (c) if he becomes subject to any of the disqualifications referred to in Article 37e

### **37g. Determination of Questions as to Membership**

(1) Any question as to the validity of the appointment of a member or

whether any person has vacated his seat as a member of the Council shall be referred to and determined by a tribunal consisting of a Judge of the Supreme Court appointed by the Chief Justice and two other persons appointed by the Council

(2) Any tribunal constituted under clause (1) shall—

(a) sit in private,

(b) afford the person concerned adequate opportunity to call witnesses and be heard, and

(c) report its decision to the Chairman

(3) The decision of the tribunal shall be final and shall not be questioned in any court

### 37h Oaths of Allegiance and Secrecy

Before any person who has been appointed Chairman or a member enters upon the duties of his office, he shall take and subscribe before a Judge of the Supreme Court the Oath of Allegiance and the Oath of Secrecy in the forms set out respectively in paragraphs 2 and 8 in the First Schedule

### 37i. Function of Council

It shall be the function of the Council to advise and make recommendations to the President on any matter referred to the Council by the President pursuant to Article 21 (3) or (4)

### 37j Proceedings of Council

(1) The proceedings of the Council shall be conducted in private and the Council may require any public officer or any officer of any statutory board or Government company to appear before the Council and to give such information in relation to any matter referred to the Council by the President pursuant to Article 21 (3) or (4) and such officer shall not disclose or divulge to any person any matter which has arisen at any meeting of the Council unless he is expressly authorized to do so by the President

(2) In advising or making recommendations to the President in relation to any Supply Bill, Supplementary Supply Bill, or Final Supply Bill, the Council shall state—

(a) whether its advice or recommendation is unanimous or the number of votes for and against it, and

(b) where the Council advises or recommends to the President to withhold his assent to any Supply Bill, Supplementary Supply Bill, or Final Supply Bill, the grounds on which the Council reached its conclusion

(3) Subject to the provisions of this Constitution, the Council may make rules with respect to the regulation and conduct of its proceedings and the dispatch of its business (including any quorum) but no such rules shall have effect until they have been approved by the President

**37k. Council to Report to Prime Minister and Parliament**

The Council shall, as soon as practicable after advising or making any recommendation to the President in relation to a Supply Bill, Supplementary Supply Bill, or Final Supply Bill, send a copy of the advice or recommendation to—

- (a) the Prime Minister, and
- (b) the Speaker who shall cause the copy to be presented to Parliament as soon as possible

**37l. Fees**

(1) There shall be paid to the Chairman and the other members of the Council such fees as may be determined by the President

(2) The fees payable under clause (1) shall be charged on and paid out of the Consolidated Fund and shall not be diminished during the continuance in office of the Chairman and the members of the Council

**37m. Appointment of Staff**

The Council shall have power to appoint a Secretary to the Council and such other officers as may be required to enable the Council to carry out its functions

## PART VI THE LEGISLATIVE

**38. Legislature of Singapore**

The Legislature of Singapore shall consist of the President and Parliament

**39. Parliament**

(1) Parliament shall consist of—

(a) such number of elected Members as is required to be returned at a general election by the constituencies prescribed by or under any law made by the Legislature,

(b) such other Members, not exceeding 6 in number, who shall be known as non-constituency Members, as the Legislature may provide in any law relating to Parliamentary elections to ensure the representation in Parliament of a minimum number of Members from a political party or parties not forming the Government, and

(c) such other Members not exceeding 6 in number, who shall be known as nominated Members, as may be appointed by the President in accordance with the provisions of the Fourth Schedule

(2) A non-constituency Member or a nominated Member shall not vote in Parliament on any motion pertaining to—

- (a) a Bill to amend the Constitution,
- (b) a Supply Bill, Supplementary Supply Bill, or Final Supply Bill,
- (c) a Money Bill as defined in Article 68,

- (d) a vote of no confidence in the Government, and
- (e) removing the President from office under Article 221

(3) In this article and in Articles 39a and 47, a constituency shall be construed as an electoral division for the purposes of Parliamentary elections

(4) If any person who is not a Member of Parliament is elected as Speaker or Deputy Speaker, he shall, by virtue of holding the office of Speaker or Deputy Speaker, be a Member of Parliament in addition to the Members aforesaid, except for the purposes of Chapter 2 of Part V and of Article 46

### 39a. Group Representation Constituencies

(1) The Legislature may, in order to ensure the representation in Parliament of Members from the Malay, Indian and other minority communities, by law make provision for—

(a) any constituency to be declared by the President, having regard to the number of electors in that constituency, as a group representation constituency to enable any election in that constituency to be held on a basis of a group of not less than 3 but not more than 4 candidates, and

(b) the qualifications, in addition to those in Article 44, of persons who may be eligible for any election in group representation constituencies, including the requirements referred to in clause (2)

(2) Any law made pursuant to clause (1) shall provide for—

(a) the President to designate every group representation constituency—

(i) as a constituency where at least one of the candidates in every group shall be a person belonging to the Malay community, or

(ii) as a constituency where at least one of the candidates in every group shall be a person belonging to the Indian or other minority communities,

(b) the establishment of—

(i) a committee to determine whether a person desiring to be a candidate belongs to the Malay community, and

(ii) a committee to determine whether a person desiring to be a candidate belongs to the Indian or other minority communities, for the purpose of any election in group representation constituencies,

(c) all the candidates in every group to be either members of the same political party standing for election for that political party or independent candidates standing as a group,

(d) the minimum and maximum number of Members to be returned in all group representation constituencies at a general election, and

(e) the number of group representation constituencies to be designated under Paragraph (a)(i)

(3) No provision of any law made pursuant to this article shall be invalid on the ground of inconsistency with Article 12 or be considered to be a discriminatory measure under Article 78

(4) In this article—

— “election” means an election for the purpose of electing a Member of Parliament,

— “group” means a group of not less than 3 but not more than 4 candidates nominated for any election in any group representation constituency,

— “person belonging to the Malay community” means any person, whether of the Malay race or otherwise, who considers himself to be a member of the Malay community and who is generally accepted as a member of the Malay community by that community,

— “person belonging to the Indian or other minority communities” means any person of Indian origin who considers himself to be a member of the Indian community and who is generally accepted as a member of the Indian community by that community, or any person who belongs to any minority community other than the Malay or Indian community

#### 40. Speaker

(1) When Parliament first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be Speaker, and, whenever the office of Speaker is vacant otherwise than by reason of a dissolution of Parliament, shall not transact any business other than the election of a person to fill that office

(2) The Speaker may be elected, in such manner as Parliament may from time to time decide, either from among the Members of Parliament who are neither Ministers nor Parliamentary Secretaries or from among persons who are not Members of Parliament. Provided that a person who is not a Member of Parliament shall not be elected as Speaker if, under any of the provisions of this Constitution, he is not qualified for election as a Member of Parliament

(3) Upon the Speaker being elected and before he enters upon the duties of his office, he shall (unless he has already done so in accordance with Article 61) take and subscribe before Parliament the Oath of Allegiance in the form set out in the First Schedule

(4) The Speaker may at any time resign his office by writing under his hand addressed to the Clerk of Parliament, and shall vacate his office

(a) when Parliament first meets after a general election,

(b) in the case of a Speaker elected from among the Members of Parliament, if he ceases to be a Member of Parliament otherwise than by reason of a dissolution thereof or if he is appointed to be a Minister or a Parliamentary Secretary, or

(c) in the case of a Speaker elected from among persons who are not Members of Parliament, if any circumstance arises that, if he had been elected to a seat in Parliament, would cause him to vacate his seat by virtue of Article 46 (2)(a) or (c)

**41. Remuneration of Speaker**

The Speaker shall be paid such salary as Parliament may from time to time determine, and that salary, which is hereby charged on the Consolidated Fund, shall not be diminished during his continuance in office

**42. Deputy Speaker**

(1) Parliament shall from time to time elect two Deputy Speakers; and whenever the office of a Deputy Speaker is vacant otherwise than by reason of a dissolution of Parliament, Parliament shall, as soon as convenient, elect a person to that office

(2)(a) A Deputy Speaker may be elected, in such manner as Parliament may from time to time decide, either from among the Members of Parliament who are neither Ministers nor Parliamentary Secretaries or from among persons who are not Members of Parliament. Provided that a person who is not a Member of Parliament shall not be elected as Deputy Speaker if, under any of the provisions of this Constitution, he is not qualified for election as a Member of Parliament

(b) Upon a Deputy Speaker being elected and before he enters upon the duties of his office, he shall (unless he has already done so in accordance with Article 61) take and subscribe before Parliament the Oath of Allegiance in the form set out in the First Schedule

(c) A Deputy Speaker may at any time resign his office, by writing under his hand addressed to the Clerk of Parliament and shall vacate his office—

(i) when Parliament first meets after a general election,

(ii) in the case of a Deputy Speaker elected from among the Members of Parliament, if he ceases to be a Member of Parliament otherwise than by reason of a dissolution thereof or if he is appointed to be a Minister or a Parliamentary Secretary, or

(iii) in the case of a Deputy Speaker elected from among persons who are not Members of Parliament, if any circumstance arises that, if he had been elected to a seat in Parliament, would cause him to vacate his seat by virtue of Article 46 (2)(a) or (c)

(3) A Deputy Speaker shall be paid such salary or allowance as Parliament may from time to time determine and that salary or allowance, which is hereby charged on the Consolidated Fund, shall not be diminished during his continuance in office

**43. Performance of Functions of Speaker**

The functions conferred by this Constitution upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from a sitting of Parliament or is otherwise unable to perform those functions, be performed by a Deputy Speaker, or if there be no Deputy Speaker or if he is likewise absent or unable to perform those functions, by some other person to be elected by Parliament for the purpose

**44. Qualifications for Membership of Parliament**

(1) Members of Parliament shall be persons qualified for election or for appointment in accordance with the provisions of this Constitution and elected in the manner provided by or under any law for the time being in force in Singapore or appointed in accordance with the provisions of the Fourth Schedule

(2) A person shall be qualified to be elected or appointed as a Member of Parliament if—

(a) he is a citizen of Singapore.

(b) he is of the age of 21 years or above on the day of nomination,

(c) his name appears in a current register of electors,

(d) he is resident in Singapore at the date of his nomination for election and has been so resident for periods amounting in the aggregate to not less than 10 years prior to that date,

(e) he is able, with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament to speak and, unless incapacitated by blindness or other physical cause, to read and write at least one of the following languages, that is to say, English, Malay, Mandarin and Tamil, and

(f) he is not disqualified from being a Member of Parliament under Article 45

(3) Any question whether any person possesses the qualifications mentioned in clause (2) (e) shall be determined in such manner as may be prescribed by or under any law for the time being in force in Singapore or in so far as not so prescribed, as may be provided by order made by the President and published in the Gazette

**45. Disqualifications for Membership of Parliament**

(1) Subject to this article, a person shall not be qualified to be a Member of Parliament who—

(a) is and has been found or declared to be of unsound mind,

(b) is an undischarged bankrupt,

(c) holds an office of profit,

(d) having been nominated for election to Parliament or the office of President or having acted as election agent to a person so nominated, has failed to lodge any return of election expenses required by law within the time and in the manner so required,

(e) has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000 and has not received a free pardon. Provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore,

(f) has voluntarily acquired the citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country, or

(g) is disqualified under any law relating to offenses in connection with elections to Parliament or the office of President by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence

(2) The disqualification of a person under clause (1)(d) or (e) may be removed by the President and shall, if not so removed, cease at the end of 5 years beginning from the date on which the return mentioned in clause (1) (d) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in clause (1) (e) was released from custody or the date on which the fine mentioned in clause (1) (e) was imposed on such person, and a person shall not be disqualified under clause (1) (f) by reason only of anything done by him before he became a citizen of Singapore

(3) In clause (1)(f), "foreign country" does not include any part of the Commonwealth or the Republic of Ireland

#### 46. Tenure of Office of Members

(1) Every Member of Parliament shall cease to be a Member at the next dissolution of Parliament after he has been elected or appointed, or previously thereto if his seat becomes vacant, under the provisions of this Constitution

(2) The seat of a Member of Parliament shall become vacant—

(a) if he ceases to be a citizen of Singapore,

(b) if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election,

(c) if, by writing under his hand addressed to the Speaker, he resigns his seat in Parliament,

(d) if during two consecutive months in each of which sittings of Parliament (or any committee of Parliament to which he has been appointed) are held, he is absent from all such sittings without having obtained from the Speaker before the termination of any such sitting permission to be or to remain absent therefrom,

(e) if he becomes subject to any of the disqualifications specified in Article 45,

(f) if he is expelled from Parliament in the exercise of its power of expulsion, or

(g) if being a nominated Member, his term of service as such a Member expires

(2a) A non-constituency Member of Parliament shall vacate his seat as such a Member if he is subsequently elected as a Member of Parliament for any constituency

(2b) A nominated Member of Parliament shall vacate his seat as such a Member—

- (a) if he stands as a candidate for any political party in an election, or
- (b) if not being a candidate referred to in paragraph (a), he is elected as a Member of Parliament for any constituency.

(3) Any person whose seat in Parliament has become vacant may, if qualified, again be elected or appointed as a Member of Parliament from time to time

#### **47. Provision Against Double Membership**

A person shall not be at the same time a Member of Parliament for more than one constituency

#### **48. Decision on Questions as to Disqualification**

Any question whether—

- (a) any Member of Parliament has vacated his seat therein, or
- (b) in the case of any person who has been elected as Speaker or Deputy Speaker from among persons who are not Members of Parliament, any circumstance has arisen that, if he had been elected to a seat in Parliament, would cause him to vacate his seat by virtue of Article 46 (2)(a) or (e), shall be determined by Parliament whose decision shall be final. Provided that this article shall not be taken to prevent the practice of Parliament postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification)

#### **49. Filling of Vacancies**

(1) Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force

(2) The Legislature may by law provide for—

- (a) the vacating of a seat of a non-constituency Member in circumstances other than those specified in Article 46,
- (b) the filling of vacancies of the seats of non-constituency Members where such vacancies are caused otherwise than by a dissolution of Parliament

#### **50. Penalty for Unqualified Persons Sitting or Voting in Parliament**

(1) Any person who sits or votes in Parliament, knowing or having reasonable ground for knowing that he is not entitled to do so, shall be liable to a penalty not exceeding \$200 for each day on which he so sits or votes

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Attorney-General

#### **51. Staff of Parliament**

(1) The staff of Parliament shall consist of a Clerk of Parliament and such other officers as may from time to time be appointed under Part IX to assist

## Articles 52-56]

(2) The Clerk of Parliament shall be appointed by the President after consultation with the Speaker and the Public Service Commission

(3) The Clerk of Parliament may at any time resign his office by writing under his hand addressed to the Speaker and, subject to clause (4), may be removed from office by the President after consultation with the Speaker

(4) The Clerk of Parliament shall not be removed from office under clause (3) unless Parliament, by a resolution which has received the affirmative votes of not less than two-thirds of all the Members thereof, has resolved that he ought to be so removed for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior

(5) The staff of Parliament shall not be eligible for promotion or transfer to any other office in the public service without the consent of the Speaker.

(6) Subject to Article 159, the terms of service of the staff of Parliament may be determined by Parliament after receiving the advice of a Commission consisting of the following persons, that is to say

(a) the Speaker, as Chairman,

(b) not more than 3 Ministers nominated by the Prime Minister, of whom one shall be the Minister responsible for finance, and

(c) a member of the Public Service Commission

## 52 Standing Orders

Subject to the provisions of this Constitution, Parliament may, from time to time, make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business

## 53 Use of Languages in Parliament

Until the Legislature otherwise provides, all debates and discussions in Parliament shall be conducted in Malay, English, Mandarin, or Tamil

## 54 Presiding in Parliament

The Speaker shall preside at each sitting of Parliament

## 55 Validity of Proceedings of Parliament

Parliament shall not be disqualified for the transaction of business by reason of any vacancies among the Members thereof, including any vacancy not filled when Parliament is first constituted or is reconstituted at any time, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Parliament or otherwise took part in the proceedings

## 56 Quorum

If objection is taken by any Member present that there are present fewer than one-quarter of the total number of Members and, after such interval as may be prescribed in the Standing Orders of Parliament, the Speaker or other Member presiding certifies that the number of Members present is still less than one-quarter of the total number of Members, he shall thereupon adjourn Parliament

**57. Voting**

(1) Subject to this Constitution, all questions proposed for decision in Parliament shall be determined by a majority of the votes of the Members present and voting, and if, upon any question before Parliament, the votes of the Members are equally divided, the motion shall be lost

(2) If the Speaker has been elected from among persons who are not Members of Parliament, he shall not vote, but subject to this provision, the Speaker or other person presiding shall have an original vote but no casting vote

**58. Exercise of Legislative Power**

(1) Subject to the provisions of Part VII, the power of the Legislature to make laws shall be exercised by Bills passed by Parliament and assented to by the President

(2) A Bill shall become law on being assented to by the President and such law shall come into operation on the date of its publication in the Gazette or, if it is enacted either in such law or in any other law for the time being in force in Singapore that it shall come into operation on some other date, on that date

**59. Introduction of Bills**

(1) Subject to the provisions of this Constitution and of Standing Orders of Parliament, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to, Parliament, and the same shall be debated and disposed of according to the Standing Orders of Parliament

(2) A Bill or amendment making provision (whether directly or indirectly) for—

(a) imposing or increasing any tax or abolishing, reducing or remitting any existing tax,

(b) the borrowing of money, or the giving of any guarantee, by the Government, or the amendment of the law relating to the financial obligations of the Government,

(c) the custody of the Consolidated Fund, the charging of any money on the Consolidated Fund or the abolition or alteration of any such charge;

(d) the payment of moneys into the Consolidated Fund or the payment, issue or withdrawal from the Consolidated Fund of any moneys not charged thereon, or any increase in the amount of such a payment, issue or withdrawal, or

(e) the receipt of any moneys on account of the Consolidated Fund or the custody or issue of such moneys, being provision as respects which the Minister charged with responsibility for finance signifies that it goes beyond what is incidental only and not of a substantial nature having regard to the purposes of the Bill or amendment, shall not be introduced or moved except on the recommendation of the President signified by a Minister

(3) A Bill or amendment shall not be deemed to make provision for any of the said matters by reason only that it provides for the imposition or alteration of any fine or other pecuniary penalty or for the payment or demand of a license fee or a fee or charge for any service rendered

#### 60 Words of Enactment of Laws

In every Bill presented for assent, the words of enactment shall be as follows "Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows"

#### 61 Oath of Allegiance

No Member of Parliament shall be permitted to take part in the proceedings thereof (other than proceedings necessary for the purpose of this article) until he has taken and subscribed before Parliament the Oath of Allegiance in the form set out in the First Schedule Provided that the election of a Speaker may take place before the Members of Parliament have taken and subscribed such Oath

#### 62 Address by President

The President may address Parliament and may send messages thereto

#### 63 Privileges of Parliament

It shall be lawful for the Legislature by law to determine and regulate the privileges, immunities or powers of Parliament

#### 64 Sessions of Parliament

(1) There shall be a session of Parliament once at least in every year and a period of 6 months shall not intervene between the last sitting of Parliament in any one session and the first sitting thereof in the next session

(2) The sessions of Parliament shall be held in such places and shall commence at such times as the President may, from time to time, by Proclamation in the Gazette appoint

#### 65 Prorogation and Dissolution of Parliament

(1) The President may, at any time, by Proclamation in the Gazette, prorogue Parliament

(2) If, at any time, the office of Prime Minister is vacant, the President shall by Proclamation in the Gazette, dissolve Parliament as soon as he is satisfied, acting in his discretion, that a reasonable period has elapsed since that office was last vacated and that there is no Member of Parliament likely to command the confidence of a majority of the Members thereof

(3) The President may, at any time by Proclamation in the Gazette dissolve Parliament if he is advised by the Prime Minister to do so, but he shall not be obliged to act in this respect in accordance with the advice of the Prime Minister unless he is satisfied that, in tendering that advice the Prime Minister commands the confidence of a majority of the Members of Parliament

(4) The President shall not dissolve Parliament after a notice of motion has been laid on the table inquiring into the conduct of the President has been given under Art. 22(14) unless—

(a) a resolution is not passed pursuant to the notice of such motion under Article 221 (4),

(b) where a resolution has been passed pursuant to the notice of such motion under Article 221 (4), the tribunal appointed under Article 221 (5) determines and reports that the President has not become permanently incapable of discharging the functions of his office or that the President has not been guilty of any of the other allegations contained in such motion,

(c) the consequent resolution for the removal of the President is not passed under Article 221 (7), or

(d) Parliament by resolution requests the President to dissolve Parliament

(4) Parliament, unless sooner dissolved, shall continue for 5 years from the date of its first sitting and shall then stand dissolved

#### 66. General Elections

There shall be a general election at such time, within 3 months after every dissolution of Parliament, as the President shall, by Proclamation in the Gazette, appoint

#### 67. Remuneration of Members

The Legislature may by law make provision for the remuneration of Members of Parliament

### PART VII

## THE PRESIDENTIAL COUNCIL FOR MINORITY RIGHTS

#### 68. Interpretation

In this Part, unless the context otherwise requires—

— “adverse report” means a report of the Council stating that, in the opinion of the Council, some specified provision of a Bill or of a subsidiary legislation would be a differentiating measure,

— “Chairman” means the Chairman of the Council,

— “Council” means the Presidential Council for Minority Rights established under Article 69,

— “differentiating measure” means any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community,

— “member” means a member of the Council and includes the Chairman,

— “Money Bill” means a Bill which contains only provisions dealing with all or any of the following matters

(a) the imposition, repeal, remission, alteration or regulation of taxation,

(b) the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund or any other public funds, or the variation or repeal of any such charges,

(c) the grant of money to the Government or to any authority or person, or the variation or revocation of any such grant,

(d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money,

(e) the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan,

(f) subordinate matters which are ancillary or incidental to any of the foregoing matters,

— "sitting day" means any date on which Parliament meets

#### 69. Establishment of Presidential Council for Minority Rights

(1) There shall be a Presidential Council for Minority Rights which shall consist of—

(a) a Chairman appointed for a period of 3 years,

(b) not more than 10 permanent members appointed for life, and

(c) not more than 10 other members appointed for a period of 3 years

(2) The Chairman and the members shall be appointed by the President if he, acting in his discretion, concurs with the advice of the Cabinet

(3) The Chairman and the members appointed under clause (1) (c) shall be eligible for reappointment

#### 70. Temporary Appointment During Incapacity of Member

Whenever a member informs the Chairman that he is or will be incapable, for a period of 3 months or more, of taking part in the proceedings of the Council by reason of illness, absence or other cause, the Chairman shall convey the information to the President who may, if he, acting in his discretion, concurs with the advice of the Cabinet, appoint a person to serve as a member for that period

#### 71. Qualifications of Members

No person shall be qualified to be appointed as a member unless he—

(a) is a citizen of Singapore,

(b) is not less than 35 years of age,

(c) is resident in Singapore, and

(d) is not liable to any of the disqualifications provided in Article 72

#### 72. Disqualifications of Members

A person shall be disqualified for appointment as a member who—

(a) is or has been found or declared to be of unsound mind,

(b) is insolvent or an undischarged bankrupt,

(c) has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000 and has not received a free pardon. Provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore, or

(d) has voluntarily acquired the citizenship of, or exercise the rights of citizenship in, a foreign country or has made a declaration of alliance to a foreign country

### 73. Termination of Membership

A member shall vacate his seat in the Council—

(a) if he ceases to be a citizen of Singapore,

(b) if by writing under his hand addressed to the Chairman he resigns his seat, or

(c) if he becomes subject to any of the disqualifications provided in Article 72

### 74. Determination of Questions as to Membership

(1) Any question whether any person has become a member or has vacated his seat as such member shall be referred to and determined by a tribunal consisting of a Judge of the Supreme Court appointed by the Chief Justice and two members appointed by the Council

(2) Any tribunal constituted under clause (1) shall—

(a) sit in private,

(b) afford the person concerned adequate opportunity to call witnesses and be heard, and

(c) report its decision to the Chairman

(3) The decision of the tribunal shall be final and shall not be open to question in any court

### 75. Oaths of Allegiance and Secrecy

Before any person who has been appointed Chairman or a member enters upon the duties of his office, he shall take and subscribe before a Judge of the Supreme Court the Oath of Allegiance and the Oath of Secrecy in the forms set out respectively in paragraphs 2 and 7 in the First Schedule

### 76. General Function of Council

(1) It shall be the general function of the Council to consider and report on such matters affecting persons of any racial or religious community in Singapore as may be referred to the Council by Parliament or the Government

(2) A reference to the Council by Parliament may be made by the Speaker, and a reference to the Council by the Government may be made by a Minister

#### 77 Functions of Council in Respect of Bills and Subsidiary Legislation

It shall be the particular function of the Council to draw attention to any Bill or to any subsidiary legislation if that Bill or subsidiary legislation is, in the opinion of the Council, a differentiating measure

#### 78. Copies of Bills and Amendments Thereto to be Sent to Council

(1) Immediately after any Bill to which this article applies has been given a final reading and passed by Parliament and before it is presented to the President for assent, the Speaker shall cause an authenticated copy of the Bill to be sent to the Council

(2) The Council shall consider the Bill and shall, within 30 days of the date on which the Bill was sent to the Council, make a report to the Speaker stating whether or not in the opinion of the Council any and, if so, which provision of the Bill would, if enacted, be a differentiating measure

(3) Whenever after the receipt of an adverse report from the Council, the Bill to which it relates is amended by Parliament, the Speaker shall cause the Bill in its amended form to be sent again to the Council

(4) On the application of the Chairman, the Speaker may extend, as he thinks fit, the period of 30 days prescribed by clause (2), where he considers it proper to do so on account of the length or complexity of any Bill or the number of matters for the time being under consideration by the Council or for any sufficient reason

(5) The Speaker shall cause every report received by him from the Council in pursuance of clause (2) to be presented to Parliament without undue delay. Where the Speaker receives no such report on the Bill within the time provided in clause

(2), or any extension thereof granted under clause (4), it shall be conclusively presumed that the Council is of the opinion that no provision of the Bill would, if enacted, be a differentiating measure

(6) No Bill to which this article applies shall be presented to the President for assent unless it is accompanied by a certificate under the hand of the Speaker stating that—

(a) in the opinion of the Council no provision of the Bill would, if enacted, be a differentiating measure,

(b) no report having been received from the Council within the time prescribed or any extension thereof, the Council is presumed to be of the opinion that no provision of the Bill would, if enacted be a differentiating measure or

(c) notwithstanding the opinion of the Council that some specified provision of the Bill would, if enacted be a differentiating measure, a motion for the presentation of the Bill to the President for assent has

been passed by the affirmative vote of not less than two-thirds of the total membership of Parliament

(7) This article shall not apply to—

(a) a Money Bill,

(b) a Bill certified by the Prime Minister as being one which affects the defence or the security of Singapore or which relates to public safety, peace or good order in Singapore, or

(c) a Bill certified by the Prime Minister to be so urgent that it is not in the public interest to delay its enactment

(8) A Bill shall be deemed to be a Money Bill if the Speaker certifies in writing that, in his opinion, it is a Bill to which the definition of "Money Bill" contained in Article 68 applies. No Money Bill shall be presented to the President for assent, unless it is accompanied by the Speaker's certificate which shall be conclusive for all purposes and shall not be open to question in any court

#### **79. Functions of Council in Regard to Bills Enacted on a Certificate of Urgency**

(1) Where the President assents to a Bill which has been certified as urgent by the Prime Minister under Article 78 (7), it shall nevertheless be the duty of the Speaker to cause an authenticated copy of the Act to be sent as soon as may be to the Council

(2) The Council shall thereupon consider the Act and shall, within 30 days of the date on which the Act was sent to the Council, make a report to the Speaker stating whether or not in the opinion of the Council any and, if so, which provision of the Act is a differentiating measure

(3) The Speaker shall cause any such report to be presented to Parliament as soon as possible

#### **80. Functions of Council in Regard to Subsidiary Legislation**

(1) An authenticated copy of every piece of subsidiary legislation shall be sent to the Council by the appropriate Minister within 14 days of the publication of such subsidiary legislation

(2) The Council shall thereupon consider such subsidiary legislation and shall, within 30 days of the date on which the subsidiary legislation was sent to the Council, make a report to the Speaker and to the appropriate Minister, stating whether or not in the opinion of the Council any and, if so, which provision of the subsidiary legislation is a differentiating measure

(3) The Speaker shall cause every report of the Council on every piece of subsidiary legislation to be presented to Parliament on the next sitting day after receiving the Council's report

(4) Where an adverse report in respect of any provision of any subsidiary legislation is presented to Parliament in pursuance of clause (3), then, within 6 months after the presentation of that report, unless either—

(a) the provision has been revoked or amended by the appropriate Minister, or

(b) Parliament has passed a resolution confirming that provision, the appropriate Minister shall revoke such provision and cause a notice of revocation to be published in the Gazette

(5) If no report on any subsidiary legislation is received from the Council within the time provided in clause (2), it shall be conclusively presumed that the Council is of the opinion that no provision in such subsidiary legislation is a differentiating measure

### 81. Functions of Council in Regard to Certain Written Law

(1) The Council may examine any written law in force on 9 January, 1970 and may make a report in regard to any provision in such written law which, in the opinion of the Council, is a differentiating measure

(2) The Council shall send such report to the Speaker and the Speaker shall cause such report to be presented to Parliament as soon as possible.

(3) In the case of a report on any subsidiary legislation, the Council shall also cause a copy of the report to be sent to the appropriate Minister

### 82. Duties of Chairman

(1) The Council shall meet on the summons of the Chairman

(2) The Chairman, if present, shall preside at all meetings of the Council

(3) Whenever the office of Chairman is vacant or the Chairman for any reason is unable to attend, some other member shall be elected by the Council to act as Chairman

### 83. Quorum and Voting

(1) The Council shall not transact any business unless a quorum of 8 members, including the Chairman or member presiding, is present

(2) Any decision of the Council shall be made by a majority of the votes of the members present and voting

(3) The Chairman or member presiding shall have an original vote but not a casting vote

(4) If upon any question before the Council the votes of the members are equally divided, the motion shall be deemed to be lost

### 84. Proceedings of Council to be in Private

The proceedings of the Council shall be conducted in private and the Council shall not be entitled to hear objectors or examine witnesses in regard to any Bill or law which is being considered by the Council in pursuance of the provisions of this Part

### 85. Council's Report

In reporting the opinion of the Council under the provisions of this Part, the Council shall state—

(a) either that the report is unanimous or the number of votes for and against it and

(b) in the case of an adverse report, the grounds on which the Council has reached its conclusion

**86. Validity of Proceedings Notwithstanding Vacancy in Membership**

Subject to Article 83 (1), the Council shall not be disqualified for the transaction of business by reason of any vacancy among the members thereof, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings

**87. Attendance of Minister, etc.**

Any Minister, Minister of State or Parliamentary Secretary specially authorized by the Prime Minister for this purpose shall be entitled to attend and take part in the proceedings of the Council as if he were a member but shall not have the right to vote in the Council

**88. Power of Council to Make Rules Regulating Procedure**

Subject to the provisions of this Constitution, the Council may make rules with respect to the regulation and conduct of its proceedings and the despatch of its business but no such rules shall have effect until they have been approved by the President

**89. Annual Report**

(1) Once in every year it shall be the duty of the Council to compile and present to the President a report on the work of the Council during the preceding 12 months

(2) The President shall cause such report to be presented to Parliament as soon as possible

**90. Salaries and Fees**

(1) There shall be paid to the Chairman and the other members such salaries and fees as may be determined by the President

(2) The salaries and fees payable under clause (1) shall be defrayed out of moneys provided by Parliament

**91. Appointment of Staff**

The Council shall have power to appoint a Secretary to the Council and such other officers as may be required to enable the Council to carry out its functions under this Part

**92. Power to Make Rules Generally**

The President may make rules for the conduct of business between the Council and Parliament and between the Council and any authority empowered to make subsidiary legislation, and generally for carrying out the purposes of this Part

**PART VIII**  
**THE JUDICIARY**

**93. Judicial Power of Singapore**

The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force

**93a. Jurisdiction to Determine Questions as to Validity of Presidential Election**

(1) All proceedings relating to the election of the President shall be heard and determined by the Chief Justice or by a Judge of the Supreme Court nominated by the Chief Justice for the purpose (referred to in this Constitution as the Election Judge)

(2) The Election Judge shall have the power to hear and determine and make such orders as provided by law on proceedings relating to the election of the President, and the decision of the Election Judge in any such proceedings shall be final

(3) The procedure and practice in proceedings relating to the election of the President shall be regulated by rules which may be made by the Rules Committee constituted and appointed under section 80 of the Supreme Court of Judicature Act

**94. Constitution of Supreme Court**

(1) The Supreme Court shall consist of the Court of Appeal and the High Court with such jurisdiction and powers as are conferred on those Courts by this Constitution or any written law

(2) The office of a Judge of the Supreme Court shall not be abolished during his continuance in office

(3) A person qualified for appointment as a Judge of the Supreme Court or a person who has ceased to hold the office of a Judge of the Supreme Court may be appointed as the Chief Justice in accordance with Article 95, or may sit as a Judge of the High Court or as a Judge of Appeal, if designated for the purpose (as occasion requires) in accordance with Article 95, and such person shall hold office for such period or periods as the President, if the President, acting in his discretion, concurs with the advice of the Prime Minister, shall direct

(4) In order to facilitate the disposal of business in the Supreme Court, the President, if he, acting in his discretion, concurs with the advice of the Prime Minister, may appoint a person qualified for appointment as a Judge of the Supreme Court to be a Judicial Commissioner of the Supreme Court in accordance with Article 95 for such period or periods as the President thinks fit, and a Judicial Commissioner so appointed may in respect of such class or classes of cases as the Chief Justice may specify exercise the powers and perform the functions of a Judge of the High Court. Anything done by a Judicial Commissioner when acting in accordance with the terms of his

appointment shall have the same validity and effect as if done by a Judge of that Court and, in respect thereof, he shall have the same powers and enjoy the same immunities as if he had been a Judge of that Court

(5) For the purposes of Clause (4), the President may appoint a person qualified for appointment as a Judge of the Supreme Court to be a Judicial Commissioner to hear and determine a specified case only

#### **95. Appointment of Judges of Supreme Court**

(1) The Chief Justice, the Judges of Appeal, and the Judges of the High Court shall be appointed by the President if he, acting in his discretion, concurs with the advice of the Prime Minister

(2) Before tendering his advice as to the appointment under clause (1) of a Judge, other than the Chief Justice, the Prime Minister shall consult the Chief Justice

(3) This article shall apply to the designation of a person to sit as a Judge of the High Court or as a Judge of Appeal under Article 94 (3) and to the appointment of a Judicial Commissioner of the Supreme Court under Article 94 (4) as it applies to the appointment of a Judge of the High Court other than the Chief Justice

#### **96. Qualifications of Judges of Supreme Court**

A person is qualified for appointment as a Judge of the Supreme Court if he has for an aggregate period of not less than 10 years been a qualified person within the meaning of section 2 of the Legal Profession Act or a member of the Singapore Legal Service, or both

#### **97. Oath of Office of Judges and Judicial Commissioners of Supreme Court**

The Chief Justice and every person appointed or designated to sit as a Judge of the High Court or a Judge of Appeal or appointed as a Judicial Commissioner of the Supreme Court shall, before he enters on the execution of his office, take, in the presence of the President, the Oath of Office in the form set out in the First Schedule

#### **98. Tenure of Office and Remuneration of Judges of Supreme Court**

(1) Subject to this article, a Judge of the Supreme Court shall hold office until he attains the age of 65 years or such later time not being later than 6 months after he attains that age, as the President may approve

(2) A Judge of the Supreme Court may at any time resign his office by writing under his hand addressed to the President, but shall not be removed from office except in accordance with clauses (3), (4) and (5)

(3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the President that a Judge of the Supreme Court ought to be removed on the ground of misbehavior or of inability, from infirmity of body or mind or any other cause, to properly discharge the functions of his office, the President shall appoint a tribunal in accordance with clause (4) and shall refer that representation to it, and may on the recommendation of the tribunal remove the Judge from office

(4) The tribunal shall consist of not less than 5 persons who hold or have held office as a Judge of the Supreme Court, or, if it appears to the President expedient to make such an appointment, persons who hold or have held equivalent office in any part of the Commonwealth, and the tribunal shall be presided over by the member first in the following order, namely, the Chief Justice according to their precedence among themselves and other members according to the order of their appointment to an office qualifying them for membership (the older coming before the younger of two members with appointments of the same date)

(5) Pending any reference and report under clause (3) the President may, if he, acting in his discretion, concurs with the recommendation of the Prime Minister and, in the case of any other Judge, after consulting the Chief Justice, suspend a Judge of the Supreme Court from the exercise of his functions

(6) Parliament shall by law provide for the remuneration of the Judges of the Supreme Court and the remuneration so provided shall be charged on the Consolidated Fund

(7) Subject to this article, Parliament may by law provide for the terms of office of the Judges of the Supreme Court, other than their remuneration

(8) The remuneration and other terms of office (including pension rights) of a Judge of the Supreme Court shall not be altered to his disadvantage after his appointment

(9) Notwithstanding clause (1), the validity of anything done by a Judge of the Supreme Court shall not be questioned on the ground that he had attained the age on which he was required to retire

(10) The President may in his discretion grant leave of absence from his duties to the Chief Justice and, acting on the advice of the Chief Justice, to any other Judge of the Supreme Court

#### **99. Restriction on Parliamentary Discussion of Conduct of a Judge of Supreme Court**

The conduct of a Judge of the Supreme Court or a person designated to sit as such Judge or a Judicial Commissioner shall not be discussed in Parliament except on a substantive motion of which notice has been given by not less than one-quarter of the total number of the Members of Parliament

#### **100. Advisory Opinion**

(1) The President may refer to a tribunal consisting of not less than 3 Judges of the Supreme Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise

(2) Where a reference is made to a tribunal under clause (1), it shall be the duty of the tribunal to consider and answer the question so referred as soon as may be and in any case not more than 60 days after the date of such reference and the tribunal shall certify to the President for his information, its opinion on the question referred to it under clause (1) with reasons for its

answer, and any Judge in the tribunal who differs from the opinion of the majority shall in like manner certify his opinion and his reasons

(3) The opinion of the majority of the Judges in the tribunal shall, for the purposes of this article, be the opinion of the tribunal, and every such opinion of the tribunal shall be pronounced in open court

(4) No court shall have jurisdiction to question the opinion of any tribunal or the validity of any law, or any provision therein, the Bill for which has been the subject of a reference to a tribunal by the President under this article

#### 101. Continuance of Existing Judges

In this part, "office", in relation to a Judge of the Supreme Court, means the office as Chief Justice, Judge of Appeal, or Judge of the High Court, as the case may be

### PART IX

## THE PUBLIC SERVICE

### TITLE 1

## PUBLIC SERVICE COMMISSION

#### 102. Public Services

(1) For the purposes of this Constitution and except as hereinafter in this Part provided, the public services shall be—

- (a) the Singapore Armed Forces,
- (b) the Singapore Civil Service,
- (c) the Singapore Legal Service, and
- (d) the Singapore Police Force

(2) Except as otherwise expressly provided by this Constitution the qualifications for appointments and conditions of service of persons in the public services may be regulated by law and, subject to the provisions of any such law, by the President

#### 103. Interpretation

Except for the purposes of Articles 112, 114 and 115, and except where the context otherwise requires in the interpretation of this Part—

- (a) "public service" does not include service otherwise than in a civil capacity,
- (b) "public office" does not include the following offices
  - (i) the office of the Chief Justice,
  - (ii) the office of the Attorney-General,
  - (iii) the office of Judge of the Supreme Court,

(iv) the office of member of the Public Service Commission, the Legal Service Commission, the Education Service Commission or the Police and Civil Defence Services Commission,

(v) the office of any police officer below the rank of Inspector, or

(vi) any office the remuneration of the holder of which is calculated on a daily rate,

and "public officer" shall be construed accordingly

#### 104. Tenure of Public Office

Except as expressly provided by this Constitution, every person who is a member of the public service shall hold office during the pleasure of the President

#### 105. Public Service Commission

(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than 5 and not more than 14 other members, each of whom shall be appointed in writing under the hand of the President, if the President, acting in his discretion, concurs with the advice of the Prime Minister

(2) The Chairman shall be a citizen of Singapore

(3) The President may, from time to time, if he, acting in his discretion, concurs with the advice of the Prime Minister, appoint one or more Deputy Chairmen from among the members of the Public Service Commission

(4) Before tendering his advice as to the appointment under clause (3) of a Deputy Chairman, the Prime Minister shall consult the Chairman of the Public Service Commission

(5) Every Deputy Chairman appointed under clause (3) shall hold office for such period as may be specified in the terms of his appointment and shall cease to be Deputy Chairman if he ceases to be a member of the Public Service Commission

(6) A person appointed to be a member of the Public Service Commission shall thereafter be ineligible for appointment to any public office

(7) At any meeting of the Public Service Commission, 3 members who shall include either the Chairman or one of the Deputy Chairmen, and may include both of them, shall form a quorum. If the quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person not entitled to do so took part therein

(8) Before assuming the duties of his office, the Chairman and every other member of the Public Service Commission shall take and subscribe before the Chief Justice or some other Judge of the Supreme Court the appropriate Oath for the due execution of his office in the form set out in the First Schedule

### 106. Disqualification for Appointment to Commission

(1) A person shall not be appointed to be a member of the Public Service Commission if he is and shall cease to be a member if he becomes—

- (a) a public officer;
- (b) an employee of any corporation incorporated by or under the provisions of any law for the time being in force in Singapore other than the Companies Act or any corresponding previous written law;
- (c) a Member of Parliament or a duly nominated candidate for election as such Member;
- (d) a member of any trade union or of any body or association affiliated to a trade union; or
- (e) the holder of any office in any political association.

(2) Clause (1) (b) shall not apply to any person who is a member of the teaching staff of any university established by or under any written law.

### 107. Tenure of Office

(1) Subject to Article 106, every member of the Public Service Commission shall, unless he earlier resigns his office by writing under his hand addressed to the President or is removed therefrom under this article, hold office for a period of 5 years from the date of his appointment, but shall be eligible for reappointment.

Provided that a member other than the Chairman may be appointed in hold office for any shorter period of not less than 3 years.

(2) If the Prime Minister or the Chairman of the Public Service Commission after consulting with the Prime Minister, represents to the President that a member of the Public Service Commission ought to be removed from office for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour, the President shall, if he, acting in his discretion, concurs with that representation, refer that representation to a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court constituted for that purpose by the Chief Justice and shall, if that tribunal so recommends, remove that member from office by writing under his hand.

(3) The tribunal constituted under clause (2) shall regulate its own procedure and may make rules for that purpose.

### 108. Terms of Service of Chairman and Members of Commission

(1) The Chairman and other members of the Public Service Commission shall be paid such salary and allowances as may, from time to time, be determined, and such salary and allowances shall be charged on and paid out of the Consolidated Fund.

(2) Subject to the provisions of this Constitution, the terms of service of the members of the Public Service Commission may either—

- (a) be prescribed by or under any law made under this Constitution,

or

(b) (in so far as they are not prescribed by or under any such law) be prescribed by the President

(3) The terms of service of any member of the Public Service Commission shall not be altered to his disadvantage during his continuance in office

(4) For the purposes of clause (3), in so far as the terms of service of a member of the Public Service Commission depend upon his option, any terms for which he opts shall be taken to be more advantageous to him than any for which he might have opted

#### 109. Secretary to Commission

(1) There shall be a Secretary to the Public Service Commission who shall be a person who is a public officer and who shall be appointed by the President in accordance with the advice of the Commission

(2) The Secretary to the Public Service Commission shall be responsible, in accordance with such instructions as may be given to him by the Chairman of the Commission, for arranging the business for, and keeping the minutes of, the meetings of the Commission and for conveying the decisions of the Commission to the appropriate person or authority and shall have such other functions as the Chairman may, from time to time, direct

#### 110. Appointment, etc., of Public Officers

(1) Subject to the provisions of this Constitution, it shall be the duty of the Public Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss and exercise disciplinary control over public officers

(2) The promotion of public officers shall be on the basis of official qualifications, experience and merit

(3) No public officer shall be dismissed or reduced in rank under this article without being given a reasonable opportunity of being heard

(4) No member of any of the services mentioned in Article 102 (1) (b) to (d) shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank

(5) In clause (1)—

— "appoint" does not include an appointment to act in an office for two months or less,

— "transfer" does not include transfer without a change of rank within a department of the Government

### TITLE 2

#### SPECIAL SERVICE COMMISSIONS

##### 110a Education Service Commission

(1) There shall be an Education Service Commission which shall consist of—

(a) a Chairman (being either the Chairman or a Deputy Chairman of the Public Service Commission) appointed in writing under the hand of the President if the President, acting in his discretion, concurs with the advice of the Prime Minister who shall, before tendering such advice, consult the Chairman of the Public Service Commission,

(b) two members of the Public Service Commission nominated generally or specially by the Chairman of the Public Service Commission of whom one shall be nominated as the Deputy Chairman of the Education Service Commission, and

(c) two persons appointed in writing under the hand of the President if he, acting in his discretion, concurs with the advice of the Prime Minister

(2) It shall be the duty of the Education Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss, and exercise disciplinary control over all public officers in the Education Service of the Singapore Civil Service

#### **110b. Public and Civil Defence Services Commission**

(1) There shall be a Police and Civil Defence Services Commission which shall consist of—

(a) a Chairman (being either the Chairman or a Deputy Chairman of the Public Service Commission) appointed in writing under the hand of the President if the President, acting in his discretion, concurs with the advice of the Prime Minister who shall, before tendering such advice, consult the Chairman of the Public Service Commission,

(b) two members of the Public Service Commission nominated generally or specially by the Chairman of the Public Service Commission of whom one shall be nominated as the Deputy Chairman of the Police and Civil Defence Services Commission, and

(c) two persons appointed in writing under the hand of the President if he, acting in his discretion, concurs with the advice of the Prime Minister

(2) It shall be the duty of the Police and Civil Defence Services Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss, and exercise disciplinary control over all public officers in the Police Service and the Civil Defence Service, including the transfer of such officers between those Services

(3) {Mended into clause (2) by Amendment Act No 2 1994 of 23 September 1994 }

(4) In this article, the reference to the Police Service and the Civil Defence Service shall be construed as a reference to the Singapore Police Force, the Singapore Civil Defence Force and any other services as the President may, after consultation with the Chairman of the Public Service Commission, by notification in the Gazette, designate as part of the Police Service or the Civil Defence Service

## Articles 110c-110d]

**110c. Education Service Commission and Police and Civil Defence Services Commission**

(1) The provisions of this article shall have effect in relation to the Education Service Commission and to the Police and Civil Defence Services Commission, and "Commission" in this article shall be construed accordingly.

(2) The Commission may, subject to such conditions as it thinks fit, delegate to any member of the Commission, to any public officer or other person, or to any board consisting of public officers or other persons appointed by it, any of its functions in respect of any grade of service, and that member, officer, person or board shall exercise those functions under the direction and control of the Commission.

(3) At any meeting of the Commission, 3 members who shall include either its Chairman or Deputy Chairman shall form a quorum, and if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person not entitled to do so took part therein.

(4) The Commission may, subject to the provisions of this Constitution, regulate its own procedure and make rules for that purpose, and may, in connection with the discharge of its functions, confer powers and impose duties on any person or any authority of the Government.

(5) The Commission shall appoint the Secretary of the Public Service Commission or any other public officer, to be Secretary of the Commission.

(6) The Chairman of the Commission shall be appointed for a period of not less than 3 years and not more than 5 years except that—

(a) he shall cease to be Chairman if he ceases to be the Chairman or Deputy Chairman of the Public Service Commission, and

(b) the first Chairman may be appointed for a period of less than 3 years.

(7) Articles 105 (6), 106, 107 and 108 shall apply to a member of the Commission appointed under Article 110a (1) (c) or 110b (1) (c) as they apply to a member of the Public Service Commission.

(8) Before assuming the duties of his office a member of the Commission appointed under Article 110a (1)(c) or 110b (1)(c) shall take and subscribe before the Chief Justice or some other Judge of the Supreme Court the Oath for the due execution of his office in the form (with necessary modifications) applicable to a member of the Public Service Commission as set out in the First Schedule.

**110d. Personnel Boards**

(1) Subject to the provisions of this article, the President may, on the advice of the Prime Minister and by order in the Gazette, establish one or more personnel boards to exercise all or any of the powers and functions of the Public Service Commission, the Education Service Commission and the Police and Civil Defence Services Commission in respect of the public officers

each Commission has charge of under Articles 110, 110a, and 110b, respectively

(2) The order under clause (1) shall specify the powers and functions to be exercised by a personnel board and the class or classes of public officers in respect of which those powers and functions may be exercised except the following

(a) the power to dismiss and exercise disciplinary control over all public officers of any grade in Division I, and

(b) all powers of the Public Service Commission in relation to public officers in the Administrative Service and Administrative Service (Foreign Service Branch) who hold appointments of and above significant grade (as defined in Article 111a (1)) in those Services, including the power to nominate officers for appointment or promotion to that grade, and any power of appointment specified in the order as to be exercised by a personnel board shall not include a power to dismiss any person so appointed

(3) Where the President has by order established a personnel board under clause (1) for the purpose of exercising any of the powers or functions of a Commission referred to in that clause, such power or function—

(a) may be exercised by such personnel board notwithstanding anything in Articles 110 (1) and (4), 110a (2), and 110b (2), and

(b) shall, so long as it remains a power or function to be exercised by the boards pursuant to such order, cease to be exercisable by that Commission except to the extent permitted under clause (4)

(4) Subject to regulations made under clause (7), any person aggrieved by any decision of any personnel board may, within such time and in such manner as may be prescribed, appeal to the Commission referred to in clause (1) which would have exercised the powers of that personnel board if this article had not been enacted, and the decision of any such Commission shall be final

(5) Subject to clause (6), a personnel board which is established to exercise any power over officers in Division I shall consist of such persons as the President may, on the advice of the Prime Minister, appoint, except that the President may, acting in his discretion, refuse to make any such appointment if he does not concur with the advice of the Prime Minister

(6) A person shall not be appointed to be a member of a personnel board if he is, and shall cease to be a member if he becomes—

(a) a Member of Parliament or a duly nominated candidate for election as such Member,

(b) a member of any trade union or of any body or association affiliated to a trade union, or

(c) the holder of any office in any political association

(7) The President may by regulations—

(a) provide for matters relating to the appointment of members of personnel boards,

(b) prescribe the procedure to be followed by the personnel boards in the exercise of their powers and functions,

(c) prescribe the manner of appeals under clause (4), and

(d) modify the application of clause (4) by providing that appeals under that clause shall be made first to such person or persons as may be appointed by the President but without prejudice to the right to appeal thereafter to a Commission

(8) Nothing in this article shall affect any direction or delegation issued before the commencement of this article by the Education Service Commission, the Police and Civil Defence Services Commission, or the Public Service Commission under Article 110c (2) or 116 (3), as the case may be, and this article shall not apply to any power or function of these Commissions so long it forms the subject of any such direction or delegation

#### 111. Legal Service Commission

(1) There shall be a Legal Service Commission, whose jurisdiction shall extend to all officers in the Singapore Legal Service

(2) The Legal Service Commission shall consist of—

(a) the Chief Justice, as President,

(b) the Attorney-General,

(c) the Chairman of the Public Service Commission,

(d) a Judge of the Supreme Court nominated generally or specially by the Chief Justice, and

(e) not more than two members of the Public Service Commission nominated generally or specially by the Chairman of the Public Service Commission.

(3) Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of the Legal Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss and exercise disciplinary control over officers in the Singapore Legal Service

(4) The Legal Service Commission may delegate to any officer in the Singapore Legal Service or to any board of such officers appointed by it any of its functions under clause (3) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and control of the Legal Service Commission

(5) The person who is Secretary to the Public Service Commission shall be Secretary to the Legal Service Commission

#### 111a Promotion to Significant Grade

(1) The President may, by notification in the Gazette, designate as significant a grade each in the Administrative Service Scheme of Service and the Administrative (Foreign Service) Scheme of Service (referred to in this

article as the significant grade), and such notification may be subsequently amended to designate as significant any other grade in those Schemes of Service not lower than the grade first so designated

(2) Notwithstanding any other provision in the Constitution, any appointment or promotion of a public officer to the significant grade shall be made by the President, acting in accordance with the advice of the Prime Minister, from public officers nominated by the Public Service Commission

### TITLE 3

## PENSIONS, PROCEEDINGS

### 112. Protection of Pension Rights

(1) The law applicable to any pension, gratuity or other like allowance (referred to in this article as an award) granted to any public officer or to his widow, children, dependants or personal representatives shall be that in force on the relevant day or any later law not less favorable to the person concerned

(2) For the purposes of this article, the relevant day is,—

(a) in relation to an award made before 16 September 1963, the date on which the award was made,

(b) in relation to an award made after 16 September 1963 to or in respect of any person who was a public officer before that date, the date immediately before that date, and

(c) in relation to an award made to or in respect of any person who first became a public officer on or after 16 September 1963, the date on which he first became a public officer

(3) For the purposes of this article, where the law applicable to an award depends on the option of the person to whom it is made, the law for which he opts shall be taken to be more favorable to him than any other law for which he might have opted

### 113. Pension power of Public Service Commission and Legal Service Commission

(1) Where under any written law any person or authority has a discretion—

(a) to decide whether or not any award shall be made, or

(b) to withhold, reduce in amount or suspend any such award that has been made, that award shall be made and may not be withheld, reduced in amount or suspended unless the Public Service Commission or the Legal Service Commission, as the case may be, concurs in the refusal to grant the award or, as the case may be, in the decision to withhold, reduce in amount or suspend

(2) Where the amount of any award that may be made to any person is not fixed by law, the amount of the award to be made to him shall be the

greatest amount for which he is eligible unless the Public Service Commission or the Legal Service Commission, as the case may be, concurs in the making of an award of a smaller amount

(3) In this article, "award" has the same meaning as in Article 112

#### **114. Pensions, etc., to be Charged on Pension Fund, or Consolidated Fund**

Pensions, gratuities, and other like allowances granted in respect of the public service shall be charged on and paid out of, in the first instance, the Pension Fund established by the Pension Fund Act 1995 and, if that Fund is deficient, the Consolidated Fund

#### **115. Pension Rights on Transfer**

(1) Notwithstanding any provision of this Constitution relating to the circumstances in which a public officer may vacate his office, any public officer may, with the consent of the Government (which consent shall not be unreasonably withheld), relinquish his office for the purpose of transfer to some other public office or to an office in any other public service, and if he so relinquishes his office, his claim to any pension, gratuity or other like allowance shall not thereby be prejudiced

(2) For the purposes of this article, "other public service" has the meaning given to it by the Pensions Act as in force immediately before the commencement of this Constitution

#### **116 Regulations Regarding Public Service Commission**

(1) Subject to the provisions of any written law for the time being in force in Singapore, the President may make regulations for all or any of the following matters

(a) the division of public offices into Divisions and Services,

(b) the prescribing of Schemes regulating the recruitment, service and promotion of members of such Services, and

(c) the conduct and discipline of the public service

(2) The Public Service Commission may, subject to the provisions of this Constitution, regulate its own procedure and make rules for that purpose, and may, in connection with the discharge of its functions, confer powers and impose duties on any person or any authority of the Government

(3) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions under Article 110 (1) to any member of the Commission, to any public officer or other person, or to any board consisting of public officers and other persons appointed by it or to any person who is a member of a panel appointed by the Commission for the purposes of representing the public in any disciplinary proceedings in respect of any grade of the public service and that member, officer, board or person shall exercise those functions under the direction and control of the Public Service Commission

**117. Validation of Acts Done and Rules Made by Public Service Commission**

(1) No legal proceedings whatsoever shall lie or be instituted or maintained in any court of law for or on account of or in respect of any act, decision or thing done or taken by the Public Service Commission or by any member, committee or delegate thereof or by any person acting under the authority of the Public Service Commission during the period from 16 September 1963 to 19 June 1970 if done or taken in good faith in the execution of duty or for the purpose of regulating conduct or enforcing discipline in the public service

(2) No legal proceedings in respect of any such act, decision or thing which is alleged to have been done or taken in bad faith in the execution of duty or for the purpose of regulating conduct or enforcing discipline in the public service during the period from 16 September 1963 to 19 June 1970 shall be instituted or maintained in any court of law unless a certificate of the Attorney-General shall first have been obtained sanctioning the institution of such legal proceedings

(3) In the exercise or purported exercise of any of the powers conferred upon the Public Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over public officers, all acts or things done, exercised or performed by the Public Service Commission or by any member, committee or delegate thereof or by any person acting under the authority of the Public Service Commission during the period from 16 September 1963 to 19 June 1970 shall be deemed to be and always to have been within the competence and jurisdiction of the Public Service Commission or such member, committee, delegate or person, as the case may be, and shall be deemed to be and always to have been validly done, exercised or performed

(4) All rules, regulations, orders or notifications whatsoever made during the period from 16 September 1963 to 19 June 1970 by or in the name of the Public Service Commission or any committee thereof shall be deemed to be and always to have been validly made, notwithstanding that any such rules, regulations, orders or notifications have been revoked or amended or are or have been inconsistent with, or in conflict with, or contrary to any written law or law previously in force

**118. Performance by Public Service Commission of Other Functions**

Parliament may by law provide for the exercise of other functions by the Public Service Commission

**119. Reports of Commissions**

The Public Service Commission and the Legal Service Commission shall each make an annual report on its activities to the President and a copy of every such report shall be presented to Parliament

**PART X**  
**CITIZENSHIP**

**TITLE I**  
**ACQUISITION**

**120. Status of Citizen of Singapore**

- (1) There shall be a status known as citizen of Singapore
- (2) The status of a citizen of Singapore may be acquired—
  - (a) by birth,
  - (b) by descent,
  - (c) by registration or, before 9 August 1965, by enrolment, or
  - (d) by naturalization

**121. Citizenship by Birth**

(1) Subject to this article, every person born in Singapore after the commencement of this Constitution shall be a citizen of Singapore by birth

(2) A person shall not be a citizen of Singapore by virtue of clause (1) if at the time of his birth—

(a) his father, not being a citizen of Singapore, possessed such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the President,

(b) his father was an enemy alien and the birth occurred in a place then under the occupation of the enemy, or

(c) neither of his parents was a citizen of Singapore

(3) Notwithstanding clause (2) (c), the Government may, where it considers it just and fair and having regard to all the circumstances prevailing at the time of the application, confer citizenship upon a person born in Singapore.

**122. Citizenship by Descent**

(1) A person born outside Singapore after the commencement of this Constitution shall be a citizen of Singapore by descent if at the time of the birth his father is a citizen of Singapore, by birth or by registration. Provided that such person shall not be a citizen of Singapore by descent unless his birth is registered in the prescribed manner at the Registry of Citizens or at a diplomatic or consular mission of Singapore within one year of its occurrence or, with the permission of the Government, later. And provided further that where such person is born of a father who is a citizen of Singapore by registration at the time of the birth, he would not acquire the citizenship of that country in which he was born by reason of his birth in that country

(2) A person who, being a minor, becomes a citizen of Singapore by descent shall cease to be a citizen of Singapore on attaining the age of 22 years unless within 12 months after he attains the age of 21 years he takes the Oath

of Renunciation, Allegiance and Loyalty in the form set out in the Second Schedule and where the Government so requires divests himself of any foreign citizenship or nationality.

### 123. Citizenship by Registration

(1) Subject to the provisions of this Constitution, any person resident in Singapore of or over the age of 21 years may, on application being made therefor in the prescribed form, be registered as a citizen of Singapore if he satisfies the Government that he—

(a) is of good character,

(b) has resided in Singapore throughout the 12 months immediately preceding the date of his application;

(c) has during the 12 years immediately preceding the date of his application resided in Singapore for periods amounting in the aggregate to not less than 10 years: Provided that the Government may exempt any applicant from compliance with this paragraph—

(i) where such applicant has during the 6 years immediately preceding the date of his application resided in Singapore for periods amounting in the aggregate to not less than 5 years, or

(ii) where in any special case the Government considers fit to confer citizenship upon such applicant;

(d) intends to reside permanently in Singapore, and

(e) has an elementary knowledge of one of the following languages, namely, Malay, English, Mandarin and Tamil: Provided that the Government may exempt an applicant who has attained the age of 45 years or who is deaf or dumb from compliance with this paragraph

(2) Subject to the provisions of this Constitution, any woman who is married to a citizen of Singapore may, on making application therefor in the prescribed manner, be registered as a citizen of Singapore if she satisfies the Government—

(a) that she has resided continuously in Singapore for a period of not less than two years immediately preceding the date of the application,

(b) that she intends to reside permanently in Singapore, and

(c) that she is of good character

### 124. Registration of Minors

(1) The Government may if satisfied that a child under the age of 21 years—

(a) is the child of a citizen of Singapore, and

(b) is residing in Singapore, cause such child to be registered as a citizen of Singapore on application being made therefor in the prescribed manner by the parent or guardian of such child

(2) The Government may, in such special circumstances as it thinks fit, cause any child under the age of 21 years to be registered as a citizen of Singapore

**125. Effect of Registration**

Subject to Article 126, a person registered as a citizen of Singapore under Article 123 or 124 shall be a citizen of Singapore from the date on which he is so registered

**126. General Provisions as to Registration**

(1) No person shall be registered as a citizen of Singapore under Article 123 until he has taken the Oath of Renunciation, Allegiance and Loyalty in the form set out in the Second Schedule

(2) Except with the approval of the Government, no person who has renounced or has been deprived of citizenship of Singapore under this Constitution or the Singapore Citizenship Ordinance 1957 shall be registered as a citizen of Singapore under the provisions of this Constitution

(3) Any person who becomes a citizen of Singapore by registration under section 13 of the Singapore Citizenship Ordinance 1957 or Article 124 shall cease to be a citizen of Singapore on attaining the age of 22 years unless within 12 months after he attains the age of 21 years he takes the Oath of Renunciation, Allegiance and Loyalty in the form set out in the Second Schedule

**127. Citizenship by Naturalization**

(1) Subject to clause (4), the Government may, upon application made by any person of or over the age of 21 years who is not a citizen of Singapore, grant a certificate of naturalization to that person if the Government is satisfied—

(a) that he has resided in Singapore for the required periods and intends, if the certificate is granted, to do so permanently,

(b) that he is of good character, and

(c) that he has an adequate knowledge of the national language

(2) The periods of residence in Singapore or the relevant part of it which are required for the grant of a certificate of naturalization are periods which amount in the aggregate to not less than 10 years in the 12 years immediately preceding the date of the application for the certificate and which include the 12 months immediately preceding that date.

(3) A person to whom a certificate of naturalization is granted shall be a citizen of Singapore by naturalization from the date on which the certificate is granted

(4) No certificate of naturalization shall be granted to any person until he has taken the Oath of Renunciation, Allegiance and Loyalty in the form set out in the Second Schedule

## TITLE 2

## LOSS

**128. Renunciation of Citizenship**

(1) Any citizen of Singapore of or over the age of 21 years and of sound mind who is also or is about to become a citizen of another country may renounce his citizenship of Singapore by declaration registered by the Government, and shall upon such registration cease to be a citizen of Singapore

(2) The Government may withhold the registration of a declaration under this article—

(a) if the declaration is made during any war in which Singapore is engaged, or

(b) if the declaration is made by a person subject to the Enlistment Act unless he has—

(i) discharged his liability for full-time service under section 12 of that Act,

(ii) rendered at least 3 years of operationally ready national service under section 13 of that Act in lieu of such full-time service, or

(iii) complied with such conditions as may be determined by the Government

(3) This article applies to a woman under the age of 21 years who has been married as it applies to a person of or over that age

**129. Deprivation of Citizenship**

(1) A citizen of Singapore who is a citizen by registration or by naturalization shall cease to be such a citizen if he is deprived of his citizenship by an order of the Government made in accordance with this article

(2) The Government may, by order, deprive any such citizen of his citizenship if the Government is satisfied that the registration or the certificate of naturalization—

(a) was obtained by means of fraud, false representation or the concealment of any material fact, or

(b) was effected or granted by mistake

(3) The Government may, by order, deprive of his citizenship—

(a) any person who is a citizen of Singapore by naturalization if the Government is satisfied—

(i) that he has shown himself by act or speech to be disloyal or disaffected towards Singapore, or

(ii) that he has, during any war in which Singapore is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war, or

(b) any citizen of Singapore by registration or by naturalization if the Government is satisfied—

(i) that he has, within the period of 5 years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than 12 months or to a fine of not less than \$5,000 or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced; or

(ii) that he has, at any time after registration or naturalization, been engaged in any activities which are prejudicial to the security of Singapore, or the maintenance of public order therein, or the maintenance therein of essential services, or in any criminal activities which are prejudicial to the interests of public safety, peace or good order

(4) The Government may, by order, deprive of his citizenship any person who is a citizen of Singapore by naturalization if the Government is satisfied that, without the Government's approval, he has accepted, served in or performed the duties of any office, post or employment under the government of any foreign country or any political subdivision thereof, or under any agency of such a government, in any case where an oath, affirmation or declaration of allegiance is required in respect of the office, post or employment. Provided that a person shall not be deprived of his citizenship under this clause by reason of anything done before 9 August 1965 notwithstanding that he was at the time a citizen of Singapore.

(5) The Government may, by order, deprive of his citizenship any person who is a citizen of Singapore by naturalization if the Government is satisfied that he has been ordinarily resident in foreign countries for a continuous period of 5 years and during that period has neither—

(a) been at any time in the service of Singapore or of an international organization of which the Government was a member, nor

(b) registered annually at a consulate of Singapore his intention to retain his citizenship

(6) The Government may, by order, deprive of her citizenship any woman who is a citizen of Singapore by registration under Article 123 (2) if the Government is satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

(7) No person shall be deprived of his citizenship under this article or under Article 130 unless the Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Singapore, and no person shall be deprived of his citizenship under clause (2) (b) or clause (3) (a) or (b) (i) or under clause (4) or (5) or under Article 130 if the Government is satisfied that as a result of the deprivation he would not be a citizen of any country.

**130. Deprivation of Citizenship of Child of Person Losing Citizenship**

Where a person has—

- (a) renounced his citizenship, or
- (b) been deprived of his citizenship under Article 129 (2)(a) or 134 (1)(a), the Government may, by order, deprive of his citizenship any child of that person under the age of 21 years who has been registered as a citizen of Singapore pursuant to this Constitution and was so registered as being the child of that person or of that person's wife or husband

**131. General Provisions as to Loss of Citizenship**

Renunciation or deprivation of citizenship of Singapore shall not discharge a person from liability in respect of anything done or omitted to be done before he ceased to be a citizen of Singapore

**132. Cancellation of Enrolment as Citizen**

(1) Where a person has been enrolled as a citizen of Singapore before 9 August 1965 and the Government is satisfied that the enrolment—

- (a) was obtained by means of fraud, false representation or the concealment of any material fact, or
- (b) was effected by mistake,

the Government may, by order, cancel the enrolment

(2) Where under this article a person's enrolment as a citizen of Singapore is cancelled, that shall not discharge him from liability in respect of anything done or omitted to be done before the cancellation

**133. Procedure for Deprivation**

(1) Before making an order under Article 129, 132, 134 or 135, the Government shall give the person, against whom the order is proposed to be made, notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this article

(2) If any person to whom such notice is given applies within such time as may be prescribed to have the case referred to a committee of inquiry, the Government shall, and in any other case may, refer the case to a committee of inquiry consisting of a Chairman, who shall be a person qualified to be appointed as a Judge of the Supreme Court, and two other members chosen from a panel to be appointed by the Government in that behalf

(3) The committee of inquiry shall, on such reference, hold an inquiry in such manner as may be prescribed and submit a report to the Government and the Government shall have regard to such report in making the order

**134. Deprivation of Citizenship on Acquisition of Foreign Citizenship**

(1) The Government may, by order, deprive a citizen of Singapore of his citizenship if the Government is satisfied that—

(a) he has, while of or over the age of 18 years, at any time after 6 April 1960 acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any country outside Singapore or having so acquired such citizenship before the age of 18 years continues to retain it after that age, or

(b) the citizen, being a woman who is a citizen of Singapore by registration under Article 123 (2), has acquired the citizenship of any country outside Singapore by virtue of her marriage to a person who is not a citizen of Singapore

(2) Where the Government has made an order under this article depriving a citizen of Singapore of his citizenship, he shall cease to be a citizen with effect from the date of the order

### **135. Deprivation of Citizenship on Exercise of Rights of Foreign Nationals**

(1) The Government may, by order, deprive a citizen of Singapore of his citizenship if the Government is satisfied that—

(a) he has, while of or over the age of 18 years, at any time after 6 April 1960 voluntarily claimed and exercised any rights (other than any rights in connection with the use of a passport) available to him under the law of any country outside Singapore being rights accorded exclusively to the citizens or nationals of that country,

(b) he has, while of or over the age of 18 years, at any time after 6 April 1960 applied to the authorities of a place outside Singapore for the issue or renewal of a passport or used a passport issued by such authorities as a travel document, or

(c) he is of or over the age of 18 years and has, whether before or after attaining the age of 18 years, been ordinarily resident outside Singapore for a continuous period of 10 years (including any period of residence outside Singapore before 2 January 1986) and has not at any time—

(i) during that period or thereafter entered Singapore by virtue of a certificate of status or travel document issued by the competent authorities of Singapore, or

(ii) during that period been in the service of the Government or of an international organization of which Singapore is a member or of such other body or organization as the President may, by notification in the Gazette, designate

(2) For the purposes of clause (1) (a), the exercise of a vote in any political election in a place outside Singapore shall be deemed to be the voluntary claim and exercise of a right available under the law of that place

(3) Where the Government has made an order under this article depriving a citizen of Singapore of his citizenship, he shall cease to be a citizen with effect from the date of the order

**136. Termination of Citizenship of Malaysia**

Where a person who was a citizen of Singapore had renounced his citizenship of Malaysia or been deprived of his citizenship of Malaysia by the Government of Malaysia before 9 August 1965, such person shall be deemed to have renounced or been deprived of his citizenship of Singapore under this Constitution and to have ceased to be a citizen of Singapore

**137. Deprivation of Citizenship or Cancellation of Enrollment of Children**

(1) Where a person has been deprived of his citizenship or his enrolment as a citizen has been cancelled under the provisions of this Part, the Government may, by order, deprive of his citizenship or, as the case may be cancel the enrolment of any child of that person under the age of 21 years who has been registered or enrolled as a citizen under the provisions of this Constitution or the Singapore Citizenship Ordinance 1957 and was so registered or enrolled as being the child of that person or of that person's wife or husband

(2) No person shall be deprived of his citizenship under clause (1) unless the Government is satisfied that it is not conducive to the public good that he should continue to be a citizen, and no person shall be deprived of his citizenship under clause (1) if the Government is satisfied that as a result of such deprivation he would not be a citizen of any country

**TITLE 3****GRANT, COMMONWEALTH CITIZENSHIP****138. Grant of Certificate of Citizenship in Cases of Doubt**

Upon application made in that behalf in the prescribed manner, the Government may grant in the form prescribed a certificate of citizenship to a person with respect to whose citizenship a doubt exists, whether of fact or of law Provided that where the Government is satisfied that such a certificate was obtained in circumstances set out in Article 132 (1) (a) or (b), the Government may, by order, cancel such certificate

**139. Commonwealth Citizenship**

(1) In accordance with the position of Singapore within the Commonwealth, every person who is a citizen of Singapore enjoys by virtue of that citizenship the status of a Commonwealth citizen in common with the citizens of other Commonwealth countries

(2) Any existing law shall, except so far as Parliament otherwise provides, apply in relation to a citizen of the Republic of Ireland who is not also a Commonwealth citizen as it applies in relation to a Commonwealth citizen

**140. Application of Third Schedule**

Until the Legislature otherwise provides by law, the supplementary provisions contained in the Third Schedule shall have effect for the purposes of this Part

**141. Repeal**

(1) The Singapore Citizenship Ordinance 1957 is hereby repealed

(2) Any person who immediately before the commencement of this Constitution was, by virtue of the Singapore Citizenship Ordinance 1957, a citizen of Singapore by birth, descent, registration or naturalization, shall as from the commencement of this Constitution continue, subject to the provisions of this Constitution, to possess that status

(3) Where a person would have been a citizen of Singapore by descent immediately before the commencement of this Constitution if his birth had been registered under the provisions of the Singapore Citizenship Ordinance 1957, he shall become a citizen of Singapore by descent if his birth is registered at a consulate of Singapore or with the Government in the prescribed manner within one year of its occurrence or, with the permission of the Government, later

(4) Notwithstanding the repeal of the Singapore Citizenship Ordinance 1957, where a person who has become a citizen of Singapore was liable in respect of things done before the commencement of this Constitution to be deprived of that status under the Ordinance, then the Government may, by order, deprive him of his citizenship if proceedings for that purpose are begun during the period of two years after the commencement of this Constitution

(5) Where a person is liable to be deprived of citizenship under clause (4) and proceedings had before the commencement of this Constitution been begun to deprive him of citizenship of Singapore under the provisions of the Singapore Citizenship Ordinance 1957, those proceedings shall be treated as proceedings to deprive him of citizenship under that clause and shall be continued as such in accordance with the provisions of the Singapore Citizenship Ordinance 1957 in force immediately before the commencement of this Constitution

**PART XI****FINANCIAL PROVISIONS****TITLE 1****CONSOLIDATED FUND****142 Interpretation**

In this Part, unless the context otherwise requires—

— 'Development Fund' means the Development Fund established by the Development Fund Act;

— 'financial year' means a period of 12 months ending on 31st March in any year

**143 No Taxation Unless Authorized by Law**

No tax or rate shall be levied by, or for the purposes of, Singapore except by or under the authority of law

**144. Restriction on Loans, Guarantees, etc.**

(1) No guarantee or loan shall be given or raised by the Government—

(a) except under the authority of any resolution of Parliament with which the President concurs,

(b) under the authority of any law to which this paragraph applies unless the President concurs with the giving or raising of such guarantee or loan, or

(c) except under the authority of any other written law

(2) The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament providing, directly or indirectly, for the borrowing of money, the giving of any guarantee or the raising of any loan by the Government if, in the opinion of the President, the Bill is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office

(3) Clause (1)(b) shall apply to the following laws

(a) the Asian Development Bank Act,

(b) the Bretton Woods Agreements Act,

(c) the Economic Development Board Act,

(d) the External Loans Act,

(e) the Financial Procedure Act,

(f) the International Finance Corporation Act,

(g) the Jurong Town Corporation Act, and

(h) the Loans (International Banks) Act

**145. Consolidated Fund**

There shall be in and for Singapore a Consolidated Fund into which, subject to the provisions of any law for the time being in force in Singapore, shall be paid all revenues of Singapore not allocated to specific purposes by any written law

**146. Withdrawal from Consolidated Fund, etc.**

(1) No moneys shall be withdrawn from the Consolidated Fund unless they are—

(a) charged on the Consolidated Fund,

(b) authorized to be issued by a Supply law, Supplementary Supply law, or Final Supply law,

(c) authorized to be issued by a resolution passed by Parliament under Article 148b with which the President concurs, or

(d) authorized to be issued by the Minister responsible for finance under Article 148b (4)

(2) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by law

(3) Clause (1) shall not apply to any such sums as are mentioned in Article 147 (2)(b) (i), (u) or (w)

(4) No moneys in the Development Fund shall be withdrawn—

(a) except for any one or more purposes specified in any written law, being purposes necessary or related to the development of Singapore, and

(b) unless authorized to be issued by a Supply law, Supplementary Supply law, or Final Supply law or by the Minister responsible for finance under Article 148b (4)

#### 147 Annual Estimates of Financial Statements

(1) The Minister responsible for finance shall, before the end of each financial year, cause to be prepared annual estimates of revenue and expenditure of Singapore during the succeeding financial year which, when approved by the Cabinet, shall be presented to Parliament.

(2) The estimates of expenditure shall show separately—

(a) the total sums required to meet expenditure charged on the Consolidated Fund,

(b) the sums respectively required to meet the heads of other expenditure for the public services proposed to be met from the Consolidated Fund, except the following sums

(i) sums representing the proceeds of any loan raised by the Government for specific purposes and appropriated for those purposes by the law authorizing the raising of the loan

(ii) sums representing any money or interest on money received by the Government subject to a trust and to be applied in accordance with the terms of the trust, and

(iii) sums representing any money held by the Government which has been received or appropriated for the purpose of any trust fund established by or in accordance with any written law, and

(c) the sums respectively required to meet the heads of expenditure proposed to be met from the Development Fund

(3) The estimates of revenue to be shown in the estimates shall not include any sums received by way of zakat, fitrah and baitulmal or similar Muslim revenue

(4) The Minister responsible for finance shall also present to Parliament together with the estimates of revenue and expenditure

(a) a statement whether the annual estimates of revenue and expenditure is likely to draw on the reserves which were not accumulated by the Government during its current term of office, and

(b) an audited statement showing as far as practicable the assets and liabilities of Singapore at the end of the last completed financial year

(5) The Minister responsible for finance shall, as soon as practicable after the end of every financial year, prepare in respect of that year—

(i) in relation to accounts maintained in respect of the Consolidated Fund a full and particular account showing the amounts actually

received and spent in that year. and a full and particular statement showing receipts and expenditure of any loan moneys,

(b) a statement of receipts and expenditure of moneys accounted in the Development Fund Account,

(c) a statement of receipts and expenditure of moneys accounted in any Government fund created by any law,

(d) so far as is practicable, a statement of the assets and liabilities of Singapore at the end of the financial year,

(e) so far as is practicable, a statement of outstanding guarantees and other financial liabilities of Singapore at the end of the financial year, and

(f) such other statements as the Minister may think fit and after the accounts and statements referred to in this clause have been audited, present to the President those audited accounts and statements together with another statement stating whether the audited accounts and statements referred to in this clause show any drawing on or likelihood of drawing on the reserves of the Government which were not accumulated by the Government during its current term of office

## TITLE 2 EXPENDITURE

### 148. Authorization of Expenditure from Consolidated Fund and Development Fund

(1) The heads of expenditure to be met from the Consolidated Fund and Development Fund (other than statutory expenditure and expenditure to be met by such sums as are mentioned in Article 147 (2)(b)(i), (ii) or (iii)) shall be included in a Bill to be known as a Supply Bill providing for the issue from the Consolidated Fund and Development Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein

#### (2) Wherever—

(a) any moneys are expended or are likely to be expended in any financial year upon any service or purpose which are in excess of the sum provided for that service or purpose by the Supply law relating to that year, or

(b) any moneys are expended or are likely to be expended (otherwise than by way of statutory expenditure) in any financial year upon any new service or purpose not provided for by the Supply law relating to that year, supplementary estimates (or, as the case may be, statements of excess) shall be prepared by the Minister responsible for finance and when approved by the Cabinet, shall be presented to and voted on by Parliament, in respect of all supplementary expenditure so voted the Minister responsible for finance may, at any time before the end of the financial year, introduce into Parliament a Supplementary Supply Bill containing, under appropriate heads the estimated sums so voted and

shall, as soon as possible after the end of each financial year, introduce into Parliament a Final Supply Bill containing any such sums which have not yet been included in any Supply Bill

(2a) The Minister responsible for finance shall, in presenting to Parliament any supplementary estimates or statement of excess under clause (2), also present a statement stating whether the supplementary estimates or statement of excess, as the case may be, is likely to draw on the reserves which were not accumulated by the Government during its current term of office.

(3) The part of any estimates of expenditure presented to Parliament which shows statutory expenditure shall not be voted on by Parliament, and such expenditure shall, without further authority of Parliament, be paid out of the Consolidated Fund

(4) For the purposes of this article, "statutory expenditure" means expenditure charged on the Consolidated Fund or on the general revenues and assets of Singapore by virtue of Articles 18, 22j (3), 35 (10), 41, 42 (3), 108 (1), 114, 148e and 148f (4) or by virtue of the provisions of any other law for the time being in force in Singapore

#### 148a. Withholding of Assent to Supply Bill, etc.

(1) The President may, acting in his discretion, withhold his assent to any Supply or Supplementary Supply or Final Supply Bill for any financial year if, in his opinion, the estimates of revenue and expenditure for that year, the supplementary estimates or the statement of excess, as the case may be, are likely to lead to a drawing on the reserves which were not accumulated by the Government during its current term of office, except that if the President assents to any such Bill notwithstanding his opinion that the estimates, supplementary estimates, or statement of excess are likely to lead to a drawing on those reserves, the President shall state his opinion in writing addressed to the Speaker and shall cause his opinion to be published in the Gazette

(2) If the President withholds his assent to any Supply Bill, Supplementary Supply Bill, or Final Supply Bill relating to any financial year and no resolution to overrule the President is passed by Parliament under Article 148d within 30 days of such withholding of assent, Parliament may by resolution authorize expenditure or supplementary expenditure, as the case may be (not otherwise authorized by law) from the Consolidated Fund and Development Fund during that financial year. Provided that—

(a) where the President withholds his assent to a Supply Bill, the expenditure so authorized for any service or purpose for that financial year (which shall include any amount authorized under Article 148b (4)) shall not exceed the total amount appropriated for that service or purpose in the preceding financial year, or

(b) where the President withholds his assent to a Supplementary Supply Bill or Final Supply Bill, the expenditure so authorized for any service or purpose shall not exceed the amount necessary to replace an amount advanced from any Contingencies Fund under Article 148c (1) for that service or purpose

(3) For the purpose of Paragraph (a) of the proviso to clause (2), the total amount appropriated for any service or purpose in any financial year shall be ascertained by adding the sums appropriated for such service or purpose by the Supply law, Supplementary Supply law, and Final Supply law (if any) for that financial year.

(3a) Upon the passing of a resolution under clause (2), the Minister responsible for finance shall introduce in Parliament a Supply Bill, Supplementary Supply Bill, or Final Supply Bill, as the case may be, containing, under appropriate heads, the sums so voted on by Parliament.

(4) In forming his opinion under clause (1) in relation to any Supplementary Supply Bill or Final Supply Bill, the President shall not have regard to any amount for any service or purpose included in the Supplementary Supply Bill or Final Supply Bill which is to replace any amount advanced from any Contingencies Fund under Article 148c (1)

(5) For the purposes of this article and Article 148d, where, on the expiration of 30 days after a Supply Bill, Supplementary Supply Bill, or Final Supply Bill has been presented to the President for his assent, the President has not signified the withholding of his assent to the Bill, the President shall be deemed to have given his assent to the Bill and the date of such assent shall be deemed to be the day immediately following the expiration of the said 30 days.

#### **148b. Power to Authorize Expenditure on Account or for Unspecified Purposes**

(1) Subject to clause (3), Parliament may, by resolution approving estimates containing a vote on account, authorize expenditure for part of any year before the passing of the Supply law for that year, but the aggregate sums so voted shall be included under the appropriate heads, in the Supply law for that year.

(2) Subject to clause (3), Parliament may, by resolution approving a vote of credit, authorize expenditure for the whole or part of the year, otherwise than in accordance with Articles 147 and 148, if, owing to the magnitude or indefinite character of any service or to circumstances of unusual urgency, it appears to Parliament desirable to do so

(3) No resolution of Parliament made under clause (1) or (2) shall have effect unless the President, acting in his discretion, concurs therewith

(4) If no Supply Bill has become law by the first day of the financial year to which it relates (whether by reason of the President withholding his assent thereto or otherwise), the Minister responsible for finance may, with the prior approval of the Cabinet, authorize such expenditure (not otherwise authorized by law) from the Consolidated Fund, Development Fund or other Government fund as he may consider essential for the continuance of the public services or any purpose of development shown in the estimates until there is a supply law for that financial year. Provided that the expenditure so authorized for any service or purpose shall not exceed one-quarter of the amount voted for that service or purpose in the Supply law for the preceding

**148c. Contingencies Funds**

(1) The Legislature may by law create a Contingencies Fund each for the Consolidated Fund and for the Development Fund and authorize the Minister responsible for finance to make advances from the appropriate Contingencies Fund if—

(a) he is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or no sufficient provision has been made by a Supply law, and

(b) the President, acting in his discretion, concurs with the making of such advances

(2) Where any advance is made by virtue of the authority conferred under clause (1), a supplementary estimate of the sum required to replace the amount so advanced shall, as soon as practicable, be presented to and voted on by Parliament and the sum shall be included in a Supplementary Supply Bill or Final Supply Bill

(3) If the Minister responsible for finance intends to make any advance from a Contingencies Fund, he shall present to the President a statement stating whether the proposed advance, if replaced, is likely to draw on the reserves which were not accumulated by the Government during its current term of office

(4) The President may, acting in his discretion, refuse to concur with the making of an advance from a Contingencies Fund which in his opinion, if replaced, is likely to draw on the reserves which were not accumulated by the Government during its current term of office

**148d. Parliament May Overrule President's Withholding of Assent to Supply Bill**

(1) Where the President withholds his assent under Article 148a to any Supply Bill, Supplementary Supply Bill, or Final Supply Bill relating to any financial year contrary to the recommendation of the Council of Presidential Advisers, Parliament may by resolution passed by not less than two-thirds of the total number of the elected Members of Parliament referred to in Article 39 (1)(a) overrule the decision of the President.

(2) Upon the passing of a resolution under clause (1), the assent of the President shall be deemed to have been given on the date of the passing of such resolution

**148e. Debt Charges and Moneys Required to Satisfy Judgments**

(1) The following are hereby charged on the Consolidated Fund

(a) all debt charges for which the Government is liable; and

(b) any moneys required to satisfy any judgment, decision or award against the Government by any court or tribunal

(2) For the purposes of this article, "debt charges" includes interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby

### TITLE 3

#### AUDITOR-GENERAL

##### 148f. Appointment of Auditor-General

(1) There shall be an Auditor-General who shall be appointed by the President in accordance with the advice of the Prime Minister unless the President, acting in his discretion, does not concur with that advice.

(2) The Prime Minister shall, before tendering any advice under clause (1), consult the Chairman of the Public Service Commission

(3) It shall be the duty of the Auditor-General to audit and report on the accounts of all departments and offices of the Government, the Public Service Commission, the Legal Service Commission, the Education Service Commission, the Police and Civil Defence Services Commission the Supreme Court, all subordinate courts and Parliament

(4) The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government and accounts of other public authorities and other bodies administering public funds as may be prescribed by or under any written law.

(5) Subject to the provisions of this article, the Auditor-General shall hold office until he attains the age of 60 years, except that the President, acting in his discretion, may, if he concurs with the advice of the Prime Minister appoint an Auditor-General who has attained that age to further hold that office for such fixed periods as may be agreed between the Auditor-General and the Government.

(6) A person who has held office as Auditor-General shall not be eligible for any other appointment as a public officer.

(7) The Auditor-General may at any time resign his office by writing under his hand addressed to the President.

(8) The Auditor-General may be removed from office by the President, if the President concurs with the advice of the Prime Minister, but the Prime Minister shall not tender such advice except for inability of the Auditor-General to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehavior and except with the concurrence of a tribunal consisting of the Chief Justice and two other Judges of the Supreme Court nominated for that purpose by the Chief Justice

(9) The tribunal constituted under clause (8) shall regulate its own procedure and may make rules for that purpose

(10) Parliament shall by resolution provide for the remuneration of the Auditor-General and the remuneration so provided shall be charged on the Consolidated Fund.

(11) The remuneration and other terms of service of the Auditor-General shall not be altered to his disadvantage during his continuance in office

**148g Duty to Inform President of Certain Transactions**

(1) It shall be the duty of the Auditor-General and the Accountant-General to inform the President of any proposed transaction by the Government which to their knowledge is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office

(2) Where pursuant to clause (1) the President has been so informed of any such proposed transaction, the President, acting in his discretion, may disapprove the proposed transaction

(3) Where the President does not disapprove of any proposed transaction under clause (2) even though he is of the opinion that the proposed transaction is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office, the President shall cause his decision and opinion to be published in the Gazette

**148h Publication of President's Opinion Regarding Certain Liabilities of the Government**

Where the President considers that certain liabilities of the Government, though not requiring his approval, are likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office, he shall state his opinion in writing to the Prime Minister and shall cause the opinion to be published in the Gazette

**PART XII****SPECIAL POWERS AGAINST SUBVERSION  
AND EMERGENCY POWERS****149. Legislation Against Subversion**

(1) If an Act recites that action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore—

(a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property,

(b) to excite disaffection against the President or the Government,

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence,

(d) to procure the alteration, otherwise than by lawful means, of anything by law established, or

(e) which is prejudicial to the security of Singapore, any provision of that law designed to stop or prevent that action or any amendment to that law or any provision in any law enacted under clause (3) is valid notwithstanding that it is inconsistent with Article 9, 11, 12, 13 or 14, or would, apart from this article, be outside the legislative power of Parliament

(2) A law containing such a recital as is mentioned in clause (1) shall, if not sooner repealed, cease to have effect if a resolution is passed by Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this article.

(3) If, in respect of any proceedings whether instituted before or after the commencement of this clause, any question arises in any court as to the validity of any decision made or act done in pursuance of any power conferred upon the President or the Minister by any law referred to in this article, such question shall be determined in accordance with the provisions of any law as may be enacted by Parliament for this purpose: and nothing in Article 22c shall invalidate any law enacted pursuant to this clause.

### 150. Proclamation of Emergency

(1) If the President is satisfied that a grave emergency exists whereby the security or economic life of Singapore is threatened he may issue a Proclamation of Emergency.

(2) If a Proclamation of Emergency is issued when Parliament is not sitting the President shall summon Parliament as soon as practicable, and may, until Parliament is sitting, promulgate ordinances having the force of law if satisfied that immediate action is required

(3) A Proclamation of Emergency and any ordinance promulgated under clause (2) shall be presented to Parliament and if not sooner revoked shall cease to have effect if a resolution is passed by Parliament annulling such Proclamation or ordinance, but without prejudice to anything previously done by virtue thereof or to the power of the President to issue a new Proclamation under clause (1) or promulgate any ordinance under clause (2).

(4) Subject to clause (5) (b), while a Proclamation of Emergency is in force, Parliament may, notwithstanding anything in this Constitution make laws with respect to any matter, if it appears to Parliament that the law is required by reason of the emergency, and any provision of this Constitution (except Articles 22e, 22h, 144 (2) and 148a) or of any written law which requires any consent or concurrence to the passing of a law or any consultation with respect thereto, or which restricts the coming into force of a law after it is passed or the presentation of a Bill to the President for his assent, shall not apply to a Bill for such a law or an amendment to such a Bill

(5)(a) Subject to Paragraph (b), no provision of any ordinance promulgated under this article, and no provision of any Act which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency shall be invalid on the ground of inconsistency with any provision of this Constitution

(b) Paragraph (a) shall not validate any provision inconsistent with—

(i) Article 5 (2a):

(ii) the provisions of this Constitution specified in Article 5 (2a) conferring discretionary powers on the President: and

(iii) the provisions of this Constitution relating to religion, citizenship or language

(6) At the expiration of a period of 6 months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the Proclamation and, to the extent that it could not have been validly made but for this article, any law made while the Proclamation was in force, shall cease to have effect, except as to things done or omitted to be done before the expiration of that period

#### 151. Restrictions on Preventive Detention

(1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention

(a) the authority on whose order any person is detained under that law or ordinance shall as soon as may be, inform him of the grounds for his detention and, subject to clause (3), the allegations of fact on which the order is based and shall give him the opportunity of making representations against the order as soon as may be, and

(b) no citizen of Singapore shall be detained under that law or ordinance for a period exceeding 3 months unless an advisory board constituted as mentioned in clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the President

(2) An advisory board constituted for the purposes of this article shall consist of a chairman, who shall be appointed by the President and who shall be or have been, or be qualified to be, a Judge of the Supreme Court, and two other members, who shall be appointed by the President after consultation with the Chief Justice

(3) This article does not require any authority to disclose facts the disclosure of which would, in its opinion, be against the national interest

(4) Where an advisory board constituted for the purposes of this article recommends the release of any person under any law or ordinance made or promulgated in pursuance of this Part, the person shall not be detained or further detained without the concurrence of the President if the recommendations of the advisory board are not accepted by the authority on whose advice or order the person is detained

#### 151a Defence and Security Measures

(1) Articles 22b (7), 22d (6), 148g (2) and (3), and 148h shall not apply to any defence and security measure

(2) For the purpose of clause (1), a defence and security measure means any liability or proposed transaction which the Prime Minister and the Minister responsible for defence on the recommendations of the Permanent Secretary to the Ministry of Defence and the Chief of Defence Force, certify to be necessary for the defence and security of Singapore and any certificate under the hands of the Prime Minister and the Minister responsible for defence shall be conclusive evidence of the matters specified therein

### **PART XIII**

#### **GENERAL PROVISIONS**

##### **152. Minorities and Special Position of Malays**

(1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore.

(2) The Government shall exercise its functions in such manner as to recognize the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language

##### **153. Muslim Religion**

The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion

##### **154. Impartial Treatment of Government Employees**

Subject to the provisions of this Constitution, all persons of whatever race in the same grade of the service of the Government shall, subject to the terms and conditions of their employment, be treated impartially

##### **154a. Exemption**

The President, acting in his discretion, may by order in the Gazette exempt any transaction or class of transactions from the application of Article 144

##### **155. Authorized Reprints of Constitution**

(1) The Attorney-General may, with the authority of the President, as soon as may be after 4 May 1979 cause to be printed and published a consolidated reprint of the Constitution of Singapore, as amended from time to time, amalgamated with such of the provisions of the Constitution of Malaysia as are applicable to Singapore, into a single, composite document

(2) The President may, from time to time, authorize the Attorney-General to cause to be printed and published an up-to-date reprint of the Constitution of the Republic of Singapore, incorporating therein all amendments in force at the date of such authorization

(3) Any reprint of the Constitution of the Republic of Singapore, printed and published pursuant to clause (1) or (2), shall be deemed to be and shall be, without any question whatsoever in all courts of justice and for all purposes whatsoever, the authentic text of the Constitution of the Republic of Singapore in force as from the date specified in that reprint until superseded by the next or subsequent reprint

(4) In the preparation and compilation of any reprint pursuant to clause (1) or (2), the Attorney-General shall have, *mutatis mutandis*, the powers conferred upon the Law Revision Commissioners by section 4 of the Revised

Edition of the Laws Act in addition to the powers conferred on him by section 38 of the Interpretation Act.

(5) In the preparation and compilation of the consolidated reprint pursuant to clause (1), the Attorney-General shall have the power in his discretion—

(a) to merge the existing provisions of both Constitutions, making thereto such modifications as may be necessary or expedient in consequence of the independence of Singapore upon separation from Malaysia,

(b) to re-arrange the Parts, Articles and provisions of the Constitution of Singapore and of the Constitution of Malaysia in such connected sequence as he thinks fit, omitting inappropriate or inapplicable provisions, in the latter Constitution,

(c) where provisions exist in both Constitutions on the same subject-matter, to include in the consolidated reprint the provisions of the Constitution of Singapore on such subject-matter and to omit the duplicated provisions appearing in the Constitution of Malaysia from the consolidated reprint, and

(d) generally, to do all other things necessitated by, or consequential upon, the exercise of the powers conferred upon the Attorney-General by this article or which may be necessary or expedient for the perfecting of the consolidated reprint of the Constitution of the Republic of Singapore

#### 156. Date of Coming Into Operation of the Constitution

Subject to the provisions of Part XIV, this Constitution shall come into operation immediately before 16 September 1963

### PART XIV

#### TRANSITIONAL PROVISIONS

##### 157. Existing Standing Orders

The Standing Orders of the Legislative Assembly established by the Singapore (Constitution) Order in Council 1958 which are in force immediately before the commencement of this Constitution shall, subject to amendment or revocation under Article 52, be the Standing Orders of Parliament

##### 158. Public Officers to Continue in Office

Subject to the provisions of this Constitution every person who immediately before the commencement of this Constitution holds a public office shall on its commencement continue to hold the like office in the public service

##### 159. Terms of Service of Persons who Continue in Office

(1) Except where other provision is made by this Constitution, any

person who holds any office as from the commencement of this Constitution by virtue of having been the holder of any office immediately before its commencement shall, as from its commencement, be entitled to the same terms of service as were applicable to him immediately before its commencement, and those terms, in so far as they relate to remuneration, shall not be altered to his disadvantage during his continuance in the public service thereafter

(2) For the purposes of this article, in so far as the terms of service of any person depend upon his option, any terms for which he opts shall be taken to be more advantageous to him than any for which he might have opted

#### **160. Succession to Property**

(1) Subject to this article, all property and assets which immediately before the commencement of this Constitution were vested in Her Majesty for the purposes of the State of Singapore shall on its commencement vest in the State of Singapore

(2) Subject to the provisions of this Constitution, any land in the State of Singapore which immediately before the commencement of this Constitution was vested in Her Majesty shall on its commencement vest in the State of Singapore

(3) Any property which was immediately before the commencement of this Constitution liable to escheat to Her Majesty in respect of the Government shall on its commencement be liable to escheat to the State of Singapore

#### **161. Rights, Liabilities, and Obligations**

(1) All rights, liabilities and obligations of Her Majesty in respect of the Government shall on and after the commencement of this Constitution be rights, liabilities and obligations of the State of Singapore

(2) In this article, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise, other than rights to which Article 160 applies

#### **162. Existing Laws**

Subject to this article, all existing laws shall continue in force on and after the commencement of this Constitution and all laws which have not been brought into force by the date of the commencement of this Constitution may, subject as aforesaid, be brought into force on or after its commencement, but all such laws shall, subject to this article, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution

#### **163. Person Holding Office of President Immediately Prior to 13 November 1991 to Continue**

(1) The person holding the office of President immediately prior to 30 November 1991 shall continue to hold such office for the remainder of his term of office and shall exercise, perform and discharge all the functions

powers and duties conferred or imposed upon the office of President by this Constitution as amended by the Constitution of the Republic of Singapore (Amendment) Act 1991 (referred to in this article as the Act), as if he had been elected to the office of President by the citizens of Singapore, except that if that person vacates the office of President before the expiration of his term of office, a poll shall be conducted for the election of a new President within 6 months from the date the office of President became vacant

(2) The Act shall not affect the appointment of any person made before 30 November 1991 and that person shall continue to hold his office as if he had been appointed in accordance with the provisions of this Constitution as amended by the Act.

(3) This Constitution as amended by the Act shall have effect subject to the following modifications

(a) the initial term of office of the Government shall be the period beginning from 30 November 1991 and ending on the date immediately before the Prime Minister and Ministers first take and subscribe the Oath of Allegiance in accordance with Article 27 after the first general election following that date,

(b) Articles 22b and 22d shall apply from the first financial year of a statutory board or Government company beginning not less than 3 months after that date,

(c) in relation to the first financial year of a statutory board or Government company beginning not less than 3 months after that date, any reference in Articles 22b and 22d to the approved budget of the preceding financial year of the statutory board or Government company shall, in the absence of such a budget, be read as a reference to the budget of that preceding financial year, and

(d) Article 148a shall apply in respect of the first financial year of the Government beginning on or after that date as if the resolution of Parliament authorizing expenditure from the Development Fund for the preceding financial year forms part of the Supply law or Final Supply law for such preceding financial year

**FIRST SCHEDULE****FORMS OF OATHS**

{For the Articles 20 (3), 27, 37h, 40 (3), 42 (2)(b),  
61, 75, 97, 105 (8) and 110c (8)}

**1. Oath of Office of President**

"I, \_\_\_\_\_, having been elected President of the Republic of Singapore, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability without fear or favor, affection or ill-will, and without regard to any previous affiliation with any political party, and that I will bear true faith and allegiance to the Republic, and that I will preserve, protect, and defend its Constitution "

**1a. Oath of Office of Person Exercising Functions of Office of President**

"I, \_\_\_\_\_, Chairman of the Council of Presidential Advisers Speaker of Parliament, being required by / having been appointed under the Constitution of the Republic of Singapore to exercise the functions of the office of President, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability without fear or favor, affection or ill-will, and that I will bear true faith and allegiance to the Republic, and that I will preserve, protect, and defend its Constitution "

**2. Oath of Allegiance**

"I, \_\_\_\_\_, having been appointed to the office of \_\_\_\_\_, do solemnly swear (or affirm) that I will bear true faith and allegiance to the Republic of Singapore and that I will preserve, protect and defend the Constitution of the Republic of Singapore "

**3. Oath as Member of Parliament**

"I, . . . , having been elected as a Member of the Parliament of Singapore, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the Republic of Singapore, and that I will preserve, protect and defend the Constitution of the Republic of Singapore "

**4. Oath for due execution of Office of Prime Minister**

"I, . . . , being chosen and appointed as Prime Minister of Singapore, do solemnly swear (or affirm) that—

(a) I will, to the best of my judgment at all times when so required, freely give my counsel and advice to the President (or any person lawfully exercising the functions of that office) for the good management of the public affairs of Singapore,

(b) I will not on any account disclose the counsel, advice, opinion, or vote of any other Minister or Parliamentary Secretary,

(c) I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Singapore, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any document communicated to me or any matter coming to my knowledge as Prime Minister, and that in all things I will be a true and faithful Prime Minister "

**4a Oath for due execution of Office of Minister or Parliamentary Secretary**

"I, \_\_\_\_\_, being chosen and appointed Minister / Parliamentary Secretary of Singapore, do solemnly swear (or affirm) that—

(a) I will, to the best of my judgment at all times when so required, freely give my counsel and advice to the President (or any person lawfully exercising the functions of that office) for the good management of the public affairs of Singapore,

(b) I will not on any account disclose the counsel, advice, opinion, or vote of the Prime Minister or of any other Minister or Parliamentary Secretary,

(c) I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Singapore, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any document communicated to me or any matter coming to my knowledge in my capacity as a Minister / Parliamentary Secretary, and that in all things I will be a true and faithful Minister / Parliamentary Secretary "

**5 Oath for the Office of Chairman or other Member of the Public Service Commission**

"I, \_\_\_\_\_, having been appointed to be Chairman/a Member of the Public Service Commission do solemnly swear (or affirm) that I will freely and without fear or favor, affection or ill-will, give my counsel and advice in connection with all matters that may be referred to the Public Service Commission and that I will not directly or indirectly reveal any such matters to any unauthorized person or otherwise than in the course of duty "

**6. Oath of Office of Chief Justice, a Judge of the Supreme Court and a Judicial Commissioner**

"I, \_\_\_\_\_, having been appointed to the office of \_\_\_\_\_ do solemnly swear (or affirm) that I will faithfully discharge my judicial duties and I will do right to all manner of people after the laws and usages of the Republic of Singapore without fear or favor, affection or ill-will to the best of my ability and will preserve, protect and defend its Constitution "

**7 Oath of Secretary of Chairman or Member of the Presidential Council for Minority Rights**

"I, \_\_\_\_\_, having been appointed to be Chairman a Member of the Presidential Council for Minority Rights do solemnly swear (or affirm) that I

will not directly or indirectly reveal any matter considered in the Presidential Council for Minority Rights to any unauthorized person or otherwise than in the course of duty "

**8. Oath of Secrecy of Chairman or Member of Council of Presidential Advisers**

"I, \_\_\_\_\_, having been appointed to be Chairman/a Member of the Council of Presidential Advisers do solemnly swear (or affirm) that I will not directly or indirectly reveal any matter considered in the Council to any unauthorized person or otherwise than in the course of duty "

**SECOND SCHEDULE****OATH OF RENUNCIATION, ALLEGIANCE, AND LOYALTY**

{For the Articles 122 (2), 126 (1) and (3), and 127 (4)}

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will not exercise the rights, powers and privileges to which I may be entitled by reason of any foreign nationality or citizenship, and that I absolutely and entirely renounce all loyalty to any foreign Sovereign or State or Country and, I, \_\_\_\_\_, do further solemnly swear (or affirm) that I will be faithful and bear true allegiance to the Republic of Singapore, and that I will observe the laws and be a true, loyal and faithful citizen of Singapore "

## THIRD SCHEDULE

## CITIZENSHIP

{For the Article 140}

1. The functions of the Government under Part X shall be exercised by such Minister as the President may, from time to time, direct and references in this Schedule to the Minister shall be construed accordingly

2. A decision of the Government under Part X shall not be subject to appeal or review in any court

3. The Minister may delegate to any public officer of the Government any of his functions under Part X or under this Schedule relating to citizenship by registration and enrolment and the keeping of registers and, in relation to orders under clauses (1), (2), (3) (b), (6) and (7) of Article 129 or 132, any of his functions under Article 133 prior to determining whether to make such an order, but any person aggrieved by the decision of a public officer to whom the functions of the Minister are so delegated may appeal to the Minister

4. The Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part X and of this Schedule and, in particular, may provide for the circumstances (including cases of persons ordinarily resident outside Singapore) under which a committee of inquiry under Article 133 is to proceed by way of written representations

5. The power of the Government under Articles 122 and 141 to allow a longer period for the registration of a birth may be exercised either before or after the registration has been effected

6. Any notice to be given by the Minister to any person under Article 133 (1) may be sent to that person at his last known address or, in the case of a person under the age of 18 years (not being a married woman) to his parent or guardian at the last known address of the parent or guardian, and if an address at which the notice may be sent to any person under this paragraph is not known and cannot after reasonable inquiry be ascertained, the notice may be given by publication in the Gazette

7. It shall be the duty of the Minister to compile and maintain—

- (a) a register of citizens of Singapore by registration;
- (b) a register of citizens of Singapore by naturalization,
- (c) a register of persons to whom certificates of citizenship of Singapore have been issued under Article 138,
- (d) a register of persons who have been deprived or deemed to have been deprived of citizenship under any provision of Part X,
- (e) a register of citizens of Singapore who have renounced citizenship,
- (f) a register of persons enrolled as citizens before 9 August 1965 under Article 56 of the Constitution of the State of Singapore

(g) a register of persons whose enrolment has been cancelled under the provisions of this Constitution,

(h) an alphabetical index of all persons referred to in Paragraphs (a) to (g), and

(i) a register of persons who have been conferred citizenship under Article 121 (3)

8. If the Minister has reason to believe that an error appears in any register compiled under section 7, he shall, after giving notice to the persons concerned and after considering such representations from him as he may choose to make, make such alteration to the register as appears to the Minister to be necessary to correct the error

9. Subject to section 8, the said register shall be conclusive evidence of the matters therein contained

10. (1) It shall be an offence punishable with imprisonment for 2 years or a fine of \$1,000 or both for any person—

(a) knowingly to make any false statement with a view to inducing the Minister to grant or refuse any application under Part X,

(b) to forge or without lawful authority, alter any certificate or without any lawful authority use or have in his possession any certificate which has been so forged or altered,

(c) to fail to comply with any requirement imposed upon him by any rules made under section 4 with respect to the delivering up of certificates, or

(d) to personate or falsely represent himself to be or not to be a person to whom a certificate has been duly granted

(2) In this section, "certificate" means—

(a) any certificate of enrolment or registration as a citizen granted under Article 56 of the Constitution of the State of Singapore or under Article 123 or 124,

(b) any certificate of registration of birth granted under Article 122 or 140,

(c) any certificate of registration or naturalization granted under the Singapore Citizenship Ordinance 1957,

(d) any certificate of citizenship granted under the Singapore Citizenship Ordinance 1957 or Article 138

11. For the purposes of Part X, a person born on board a registered ship or aircraft, or on board an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country

12. Any reference in Part X to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father be construed as a reference to the status or

description of the father at the time of the death of the father, and where that death occurred before and the birth occurs on or after the commencement of this Constitution, the status or description which would have been applicable to the father had he died after such commencement shall be deemed to be the status or description applicable to him at the time of his death

13. Any new born child found exposed in Singapore of unknown and unascertainable parentage shall, until the contrary is proved, be deemed to be a citizen of Singapore by birth; and the date of finding shall be taken to be the date of birth of such child

14. For the purposes of Part X, a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provision corresponding to the proviso to Article 122 (1) or otherwise

15. (1) For the purposes of Part X, references to a person's father or to his parent or to one of his parents shall, in relation to a person who is illegitimate, be construed as references to his mother and accordingly section 12 shall not apply to such a person

(2) In relation to an adopted child who has been adopted by an order of a court in accordance with the provisions of any law in force in Singapore, references to a person's father or to his parent or to one of his parents shall be construed as references to the adopter

16. In calculating for the purposes of Part X a period of residence in Singapore—

(a) a period of absence from Singapore of less than 6 months in the aggregate, and

(b) a period of absence from Singapore exceeding 6 months in the aggregate for any cause generally or specially approved by the Government, may be treated as residence in Singapore and a person shall be deemed to be resident in Singapore on a particular day if he had been resident in Singapore before that day and that day is included in any such period of absence as aforesaid

17. In calculating for the purposes of Part X any period of residence in Singapore, no account shall be taken—

(a) of any period of residence in Singapore whilst a person was or was the member of the family of—

(i) a person recruited outside Singapore serving on full pay in any naval, military or air force other than the naval, military or air force of Singapore, or

(ii) a person recruited outside Singapore serving in a civil capacity in any department of any government operating in Singapore other than a department of the Government,

(b) of any period during which a person was not lawfully resident in Singapore,

(c) of any period spent as an inmate of any prison or as a person detained in lawful custody in any place other than a mental hospital or

an approved institution for the purpose of the treatment and rehabilitation of drug addicts under the provisions of any written law, or

(d) except with the consent of the Minister, of any period during which a person is allowed to remain temporarily in Singapore under the authority of any Pass issued under the provisions of any written law relating to immigration

18 (1) The Minister shall not be required to assign any reason for the grant or refusal of any application under Part X the decision on which is at his discretion and the decision of the Minister on any such application shall be final

(2) Before refusing such an application, the Minister shall refer the case to an advisory committee consisting of 3 persons appointed for the purpose, either generally or specially, by the President, and in making his decision, the Minister shall have regard to any report made to him by the advisory committee

## FOURTH SCHEDULE

## APPOINTMENT OF NOMINATED MEMBERS OF PARLIAMENT

{For the Articles 39 (1)(c) and 44 (1)}

1. (1) If within 6 months after Parliament first meets after any general election, it has resolved that there shall be nominated Members during the term of that Parliament, the provisions of this Schedule shall have effect in relation to that Parliament

(2) Subject to the provisions of this Constitution, the President shall, within 6 months after Parliament has so resolved under subsection (1), appoint as nominated Members of Parliament the persons nominated by a Special Select Committee of Parliament

(3) The Special Select Committee of Parliament shall consist of the Speaker as Chairman and 7 Members of Parliament to be nominated by the Committee of Selection of Parliament

(4) Subject to Article 46, every person appointed as a nominated Member of Parliament shall serve for a term of two years commencing on the date of his appointment

2. (1) In preparing the list of persons to be appointed as nominated Members of Parliament by the President, the Special Select Committee shall invite the general public to submit names of persons who may be considered for nomination by the Committee

(2) Every name submitted under subsection (1) shall be made in such form as the Special Select Committee may determine, and shall be signed by two persons as proposer and seconder respectively and by not less than 4 other persons, all of whose names shall appear in any current register of electors

(3) Before making any nomination for the appointment of nominated Members of Parliament, the Special Select Committee shall, wherever possible consult other Members of Parliament in such manner as it think fit

3. (1) The Special Select Committee shall, from the names of persons submitted to the Committee under section 2, nominate not more than 6 persons for appointment by the President as nominated Members of Parliament

(2) The persons to be nominated shall be persons who have rendered distinguished public service, or who have brought honor to the Republic, or who have distinguished themselves in the field of arts and letters, culture, the sciences business, industry, the professions, social or community service or the labor movement, and in making any nomination, the Special Select Committee shall have regard to the need for nominated Members to reflect as wide a range of independent and non-partisan views as possible

4. (1) Whenever the seat of a nominated Member has become vacant by reason of the expiry of his term of service, the vacancy shall, as soon as practicable, be filled by the President by making an appointment on the nomination of the Special Select Committee referred to in section 1

(2) Whenever the seat of a nominated Member has become vacant for a reason other than a dissolution of Parliament or the expiry of his term of service the Special Select Committee may, if it thinks fit, nominate a person for the President to appoint as a nominated Member to fill the vacancy

5. As soon as practicable after 10 September 1990, the President shall on the nomination of the Special Select Committee appoint not more than 6 persons, nominated Members of Parliament

6. Where under section 3 or 5 the Special Select Committee has nominated less than 6 persons for appointment by the President as nominated Members, the Committee may, if it thinks fit, from time to time nominate one or more persons for appointment by the President as nominated Members but the number of persons so nominated together with the number of persons already nominated under section 3 or 5 shall not exceed 6.

7. Sections 2 and 3 (2) shall apply to any nomination made by the Special Select Committee under section 4, 5 or 6, and for the purpose of section 4 (1) the Committee may invite the general public to submit names of persons who may be considered for nomination by the Committee before the seat of the nominated Member has become vacant

**FIFTH SCHEDULE****KEY STATUTORY BOARDS AND GOVERNMENT COMPANIES****{For the Articles 22a and 22c}****Part I**

1. Board of Commissioners of Currency, Singapore.
2. Central Provident Fund Board
3. Housing and Development Board.
4. Jurong Town Corporation
5. Monetary Authority of Singapore
6. Post Office Savings Bank of Singapore

**Part II**

1. Government of Singapore Investment Corporation Pte Ltd
  2. MND Holdings Pte Ltd
  3. {Deleted by Amendment No 2 Act 1994 of 23 September 1994 }
  4. Temasek Holdings Pte Ltd
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# 32

## CONSTITUTION OF SOUTH AFRICA

{Adopted on 8 May 1996}  
{Amended on 11 Oct 1996}  
{In Force since 7 Feb 1997}

### PREAMBLE

We, the people of South Africa, Recognise the injustices of our past.  
Honour those who suffered for justice and freedom in our land,  
Respect those who have worked to build and develop our country, and  
Believe that South Africa belongs to all who live in it, united in our  
diversity

We therefore, through our freely elected representatives, adopt this  
Constitution as the supreme law of the Republic so as to—

Heal the divisions of the past and establish a society based on  
democratic values, social justice and fundamental human rights,

Lay the foundations for a democratic and open society in which  
government is based on the will of the people and every citizen is equally  
protected by law,

Improve the quality of life of all citizens and free the potential of each  
person, and

Build a united and democratic South Africa able to take its rightful  
place as a sovereign state in the family of nations

May God protect our people

Mos' Sikelel iAfrika Morena boloka setjhaba sa hese

Ged sen Suid-Afrika God bless South Africa

Mudzimu thutshedza Afrika Hosi katekisa Afrika

## CHAPTER 1

### FOUNDING PROVISIONS

#### 1. Republic of South Africa

The Republic of South Africa is one sovereign democratic state founded on the following values

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms
- (b) Non-racialism and non-sexism
- (c) Supremacy of the constitution and the rule of law
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness

#### 2. Supremacy of Constitution

This Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled

#### 3. Citizenship

- (1) There is a common South African citizenship
- (2) All citizens are—
  - (a) equally entitled to the rights, privileges and benefits of citizenship, and
  - (b) equally subject to the duties and responsibilities of citizenship
- (3) National legislation must provide for the acquisition, loss and restoration of citizenship

#### 4. National anthem

The national anthem of the Republic is determined by the President by proclamation

#### 5. National flag

The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1

#### 6. Languages

- (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, <sup>isi</sup>Swati, Tshivenda, Xitsonga, Afrikaans, English, <sup>isi</sup>Ndebele, <sup>isi</sup>Xhosa and <sup>isi</sup>Zulu
- (2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages
- (3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance

of the needs and preferences of the population as a whole or in the province concerned, but the national government and each provincial government must use at least two official languages

(b) Municipalities must take into account the language usage and preferences of their residents

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of sub-section (2), all official languages must enjoy parity of esteem and must be treated equitably

(5) A Pan South African Language Board established by national legislation must—

(a) promote and create conditions for the development and use of—

(i) all official languages,

(ii) the Xhosa, Nama and San languages, and

(iii) sign language, and

(b) promote and ensure respect for—

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu and Urdu, and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa

## CHAPTER 2

### BILL OF RIGHTS

#### 7. Rights

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill

#### 8. Application

(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of sub-section (2) a court—

(a) in order to give effect to a right in the Bill must apply, or if

necessary develop, the common law to the extent that legislation does not give effect to that right, and

(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1)

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person

## 9. Equality

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law

(2) Equality includes the full and equal enjoyment of all rights and freedoms To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of sub-section (3) National legislation must be enacted to prevent or prohibit unfair discrimination

(5) Discrimination on one or more of the grounds listed in sub-section (3) is unfair unless it is established that the discrimination is fair

## 10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected

## 11. Life

Everyone has the right to life

## 12. Freedom and security of the person

(1) Everyone has the right to freedom and security of the person, which includes the right—

(a) not to be deprived of freedom arbitrarily or without just cause,

(b) not to be detained without trial,

(c) to be free from all forms of violence from either public or private sources,

(d) not to be tortured in any way, and

(e) not to be treated or punished in a cruel, inhuman or degrading way

(2) Everyone has the right to bodily and psychological integrity, which includes the right—

(a) to make decisions concerning reproduction,

- (b) to security in and control over their body, and
- (c) not to be subjected to medical or scientific experiments without their informed consent

### 13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour

### 14 Privacy

Everyone has the right to privacy, which includes the right not to have—

- (a) their person or home searched,
- (b) their property searched,
- (c) their possessions seized, or
- (d) the privacy of their communications infringed

### 15. Freedom of religion, belief and opinion

(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion

(2) Religious observances may be conducted at state or state-aided institutions, provided that—

- (a) those observances follow rules made by the appropriate public authorities,
- (b) they are conducted on an equitable basis, and
- (c) attendance at them is free and voluntary

(3) (a) This section does not prevent legislation recognising—

(i) marriages concluded under any tradition, or a system of religious, personal or family law, or

(ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion

(b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution

### 16 Freedom of expression

(1) Everyone has the right to freedom of expression, which includes—

- (a) freedom of the press and other media,
- (b) freedom to receive or impart information or ideas,
- (c) freedom of artistic creativity, and
- (d) academic freedom and freedom of scientific research

(2) The right in sub-section (1) does not extend to—

- (a) propaganda for war,
- (b) incitement of imminent violence, or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm

**17. Assembly, demonstration, picket and petition**

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions

**18. Freedom of association**

Everyone has the right to freedom of association

**19. Political rights**

(1) Every citizen is free to make political choices, which includes the right—

- (a) to form a political party,
- (b) to participate in the activities of, or recruit members for, a political party, and
- (c) to campaign for a political party or cause

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution

(3) Every adult citizen has the right—

- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret, and
- (b) to stand for public office and, if elected, to hold office

**20. Citizenship**

No citizen may be deprived of citizenship

**21. Freedom of movement and residence**

(1) Everyone has the right to freedom of movement

(2) Everyone has the right to leave the Republic

(3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic

(4) Every citizen has the right to a passport

**22. Freedom of trade, occupation and profession**

Every citizen has the right to choose their trade, occupation or profession freely

The practice of a trade, occupation or profession may be regulated by law

**23. Labour relations**

(1) Everyone has the right to fair labour practices

(2) Every worker has the right—

- (a) to form and join a trade union,
- (b) to participate in the activities and programmes of a trade union, and
- (c) to strike

(3) Every employer has the right—

- (a) to form and join an employers' organisation, and
- (b) to participate in the activities and programmes of an employers' organisation

(4) Every trade union and every employers' organisation has the right—

- (a) to determine its own administration, programmes and activities,
- (b) to organise, and
- (c) to form and join a federation

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

## 24 Environment

Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being, and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

- (i) prevent pollution and ecological degradation,
- (ii) promote conservation, and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development

## 25. Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

- (a) for a public purpose or in the public interest, and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

- (a) the current use of the property,
- (b) the history of the acquisition and use of the property,

- (c) the market value of the property,
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and
- (e) the purpose of the expropriation.

(4) For the purposes of this section—

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land

(5) The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress

(8) No provision of this section may impede the State from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1)

(9) Parliament must enact the legislation referred to in sub-section (6)

## 26. Housing

(1) Everyone has the right to have access to adequate housing

(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions

## 27. Health care, food, water and social security

(1) Everyone has the right to have access to—

(a) health care services, including reproductive health care,

(b) sufficient food and water, and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights

(3) No one may be refused emergency medical treatment

## 28 Children

(1) Every child has the right—

- (a) to a name and a nationality from birth,
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment,
- (c) to basic nutrition, shelter, basic health care services and social services,
- (d) to be protected from maltreatment, neglect, abuse or degradation,
- (e) to be protected from exploitative labour practices,
- (f) not to be required or permitted to perform work or provide services that—

(i) are inappropriate for a person of that child's age, or

(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development,

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be—

(i) kept separately from detained persons over the age of 18 years, and

(ii) treated in a manner, and kept in conditions, that take account of the child's age,

(h) to have a legal practitioner assigned to the child by the State, and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result, and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict

(2) A child's best interests are of paramount importance in every matter concerning the child

(3) In this section "child" means a person under the age of 18 years

## 29. Education

(1) Everyone has the right—

(a) to a basic education, including adult basic education, and

(b) to further education, which the State, through reasonable measures, must make progressively available and accessible

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the State must consider all reasonable educational alternatives, including single medium institutions, taking into account—

- (a) equity,
  - (b) practicability, and
  - (c) the need to redress the results of past racially discriminatory laws and practices
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that—
- (a) do not discriminate on the basis of race,
  - (b) are registered with the State, and
  - (c) maintain standards that are not inferior to standards at comparable public educational institutions
- (4) Sub-section (3) does not preclude State subsidies for independent educational institutions

### 30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights

### 31. Cultural, religious and linguistic communities

(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community—

- (a) to enjoy their culture, practise their religion and use their language, and

- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society

(2) The rights in sub-section (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights

### 32. Access to information

(1) Everyone has the right of access to—

- (a) any information held by the State, and

- (b) any information that is held by another person and that is required, for the exercise or protection of any rights

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State

### 33. Just administrative action

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons

(3) National legislation must be enacted to give effect to these rights, and must—

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal,

- (b) impose a duty on the State to give effect to the rights in sub-sections (1) and (2); and
- (c) promote an efficient administration.

#### 34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

#### 35. Arrested, detained and accused persons

(1) Everyone who is arrested for allegedly committing an offence has the right—

- (a) to remain silent;
- (b) to be informed promptly—
  - (i) of the right to remain silent; and
  - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than—
  - (i) 48 hours after the arrest, or
  - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day,
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released, and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions

(2) Everyone who is detained, including every sentenced prisoner, has the right—

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly,
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly,
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision at state expense of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with and be visited by that person's—

- (i) spouse or partner,
- (ii) next of kin;
- (iii) chosen religious counsellor, and
- (iv) chosen medical practitioner

(3) Every accused person has a right to a fair trial, which includes the right—

- (a) to be informed of the charge with sufficient detail to answer it,
- (b) to have adequate time and facilities to prepare a defence,
- (c) to a public trial before an ordinary court,
- (d) to have their trial begin and conclude without unreasonable delay,
- (e) to be present when being tried,
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly,

(g) to have a legal practitioner assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly,

(h) to be presumed innocent, to remain silent, and not to testify during the proceedings,

(i) to adduce and challenge evidence,

(j) not to be compelled to give self-incriminating evidence,

(k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language,

(l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted,

(m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted,

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing, and

(o) of appeal to, or review by, a higher court

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands

(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice

### 36. Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right,
- (b) the importance of the purpose of the limitation,
- (c) the nature and extent of the limitation,
- (d) the relation between the limitation and its purpose, and
- (e) less restrictive means to achieve the purpose

(2) Except as provided in sub-section (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights

### 37. States of emergency

(1) A state of emergency may be declared only in terms of an Act of Parliament, and only when—

- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency, and
- (b) the declaration is necessary to restore peace and order

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only—

- (a) prospectively, and

- (b) for no more than 21 days from the date of the declaration,

unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

(3) Any competent court may decide on the validity of—

- (a) a declaration of a state of emergency,
- (b) any extension of a declaration of a state of emergency, or
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that—

- (a) the derogation is strictly required by the emergency, and
- (b) the legislation—

(i) is consistent with the Republic's obligations under international law applicable to states of emergency,

(ii) conforms to sub-section (5), and

(iii) is published in the national Government Gazette as soon as reasonably possible after being enacted

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration may permit or authorise—

(a) indemnifying the state, or any person, in respect of any unlawful act,

(b) any derogation from this section, or

(c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

Section Number	Section Title	Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to sub-sections (1)(d) and (e) and (2)(c)
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to sub-section (1)(d) and (e), the rights in sub-paragraphs (i) and (ii) of sub-section (1)(g), and sub-section 1(f) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to sub-sections (1)(a), (b) and (c) and (2)(d), the rights in paragraphs (a) to (o) of sub-section (3), excluding paragraph (d) sub-section (4), and sub-section (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair

(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

(a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained

(b) A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained

(c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner

(d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative

(e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order

(f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order

(g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention

(h) The State must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the State first shows a court good cause for re-detaining that person

(8) Sub-sections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the State must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

### 38. Enforcement of rights

Anyone listed in this section has the right to approach a competent court alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are

(a) Anyone acting in their own interest,

(b) Anyone acting on behalf of another person who cannot act in their own name

(c) anyone acting as a member of, or in the interest of, a group or class of persons,

(d) anyone acting in the public interest, and

(e) an association acting in the interest of its members

### 39. Interpretation of Bill of Rights

(1) When interpreting the Bill of Rights, a court, tribunal or forum—

(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom,

(b) must consider international law, and

(c) may consider foreign law

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill

## CHAPTER 3

### CO-OPERATIVE GOVERNMENT

#### 40. Government of the Republic

(1) In the Republic, government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated

(2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides

#### 41. Principles of co-operative government and intergovernmental relations

(1) All spheres of government and all organs of State within each sphere must—

(a) preserve the peace, national unity and the indivisibility of the Republic,

(b) secure the well-being of the people of the Republic,

(c) provide effective, transparent, accountable and coherent government for the Republic as a whole,

(d) be loyal to the Constitution, the Republic and its people,

(e) respect the constitutional status, institutions, powers and functions of government in the other spheres,

(f) not assume any power or function except those conferred on them in terms of the Constitution,

(g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere, and

(h) co-operate with one another in mutual trust and good faith by—

(i) fostering friendly relations,

(ii) assisting and supporting one another,

(iii) informing one another of, and consulting one another on, matters of common interest,

(iv) co-ordinating their actions and legislation with one another,

(v) adhering to agreed procedures, and

(vi) avoiding legal proceedings against one another

(2) An Act of Parliament must—

(a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations, and

(b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes

(3) An organ of State involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute

(4) If a court is not satisfied that the requirements of sub-section (3) have been met, it may refer a dispute back to the organs of State involved

## CHAPTER 4 PARLIAMENT

### TITLE 0 GENERAL PROVISIONS

#### 42. Composition of Parliament

(1) Parliament consists of—

(a) the National Assembly, and

(b) the National Council of Provinces

(2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution

(3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive

(4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of

government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

(5) The President may summon Parliament to an extraordinary sitting at any time to conduct special business.

(6) The seat of Parliament is Cape Town, but an Act of Parliament, enacted in accordance with section 76(1) and (5), may determine that the seat of Parliament is elsewhere.

#### 43. Legislative authority of the Republic

In the Republic, the legislative authority—

(a) of the national sphere of government is vested in Parliament, as set out in section 44,

(b) of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104, and

(c) of the local sphere of government is vested in the Municipal Councils, as set out in section 156.

#### 44. National legislative authority

(1) The national legislative authority as vested in Parliament—

(a) confers on the National Assembly the power—

(i) to amend the Constitution,

(ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to sub-section (2), a matter within a functional area listed in Schedule 5, and

(iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government, and

(b) confers on the National Council of Provinces the power—

(i) to participate in amending the Constitution in accordance with section 74,

(ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4, and any other matter required by the Constitution to be passed in accordance with section 76, and

(iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.

(2) Parliament may intervene by passing legislation, in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—

(a) to maintain national security,

(b) to maintain economic unity,

(c) to maintain essential national standards.

(d) to establish minimum standards required for the rendering of services, or

(e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole

(3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4

(4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution

#### 45 Joint rules and orders and joint committees

(1) The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders—

(a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process,

(b) to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee,

(c) to establish a joint committee to review the Constitution at least annually, and

(d) to regulate the business of—

(i) the Joint Rules Committee,

(ii) the Mediation Committee,

(iii) the Constitutional Review Committee, and

(iv) any Joint Committees established in terms of paragraph (b)

(2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a joint committee of the Assembly and the Council as they have before the Assembly or the Council

### TITLE I

## THE NATIONAL ASSEMBLY

#### 46 Composition and election

(1) The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that—

(a) is prescribed by national legislation,

(b) is based on the national common voters roll,

(c) provides for a minimum voting age of 18 years, and

(d) results, in general, in proportional representation

(2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly

#### 47. Membership

(1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except—

(a) anyone who is appointed by, or is in the service of, the State and receives remuneration for that appointment or service, other than—

(i) the President, Deputy President, Ministers and Deputy Ministers, and

(ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation,

(b) permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council,

(c) unrehabilitated insolvents,

(d) anyone declared to be of unsound mind by a court of the Republic, or

(e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed

(2) A person who is not eligible to be a member of the National Assembly in terms of sub-section (1)(a) or (b) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation

(3) A person loses membership of the National Assembly if that person—

(a) ceases to be eligible, or

(b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership

(4) Vacancies in the National Assembly must be filled in terms of national legislation

#### 48. Oath or affirmation

Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

**49. Duration of National Assembly**

- (1) The National Assembly is elected for a term of five years
- (2) If the National Assembly is dissolved in terms of section 50, or when its term expires, the President, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved or its term expired
- (3) If the result of an election of the National Assembly is not declared within the period established in terms of section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside
- (4) The National Assembly remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next Assembly

**50. Dissolution of National Assembly before expiry of its term**

- (1) The President must dissolve the National Assembly if—
  - (a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members, and
  - (b) three years have passed since the Assembly was elected
- (2) The Acting President must dissolve the National Assembly if—
  - (a) there is a vacancy in the office of President, and
  - (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred

**51. Sittings and recess periods**

- (1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct special business
- (3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.

**52. Speaker and Deputy Speaker**

- (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members
- (2) The President of the Constitutional Court must preside over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker
- (3) The procedure set out in Part A of Schedule 3 applies to the election of the Speaker and the Deputy Speaker

(4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.

(5) In terms of its rules and orders the National Assembly may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

### 53. Decisions

(1) Except where the Constitution provides otherwise—

(a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;

(b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly; and

(c) all questions before the Assembly are decided by a majority of the votes cast.

(2) The member of the National Assembly presiding at a meeting of the Assembly has no deliberative vote, but—

(a) must cast a deciding vote when there is an equal number of votes on each side of a question; and

(b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Assembly.

### 54. Rights of certain Cabinet members in National Assembly

The President and any member of the Cabinet who is not a member of the National Assembly may attend and may speak in the Assembly, but may not vote.

### 55. Powers of National Assembly

(1) In exercising its legislative power, the National Assembly may—

(a) consider, pass, amend or reject any legislation before the Assembly; and

(b) initiate or prepare legislation, except money Bills.

(2) The National Assembly must provide for mechanisms—

(a) to ensure that all executive organs of State in the national sphere of government are accountable to it; and

(b) to maintain oversight of—

(i) the exercise of national executive authority, including the implementation of legislation; and

(ii) any organ of State.

### 56. Evidence or information before National Assembly

The National Assembly or any of its committees may—

(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;

(b) require any person or institution to report to it.

(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b), and

(d) receive petitions, representations or submissions from any interested persons or institutions

#### **57. Internal arrangements, proceedings and procedures of National Assembly**

(1) The National Assembly may—

(a) determine and control its internal arrangements, proceedings and procedures, and

(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement

(2) The rules and orders of the National Assembly must provide for—

(a) the establishment, composition, powers, functions, procedures and duration of its committees,

(b) the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy,

(c) financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively, and

(d) the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition

#### **58. Privilege**

(1) Cabinet members and members of the National Assembly—

(a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders, and

(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

(i) anything that they have said in, produced before or submitted to the Assembly or any of its committees, or

(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees

(2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation

(3) Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund.

#### **59. Public access to and involvement in National Assembly**

(1) The National Assembly must—

- (a) *facilitate public involvement in the legislative and other processes of the Assembly and its committees, and*
- (b) *conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—*
  - (i) *to regulate public access, including access of the media, to the Assembly and its committees, and*
  - (ii) *to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person*
- (2) *The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society*

## TITLE 2

### NATIONAL COUNCIL OF PROVINCES

#### 60. Composition of National Council

- (1) *The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates*
- (2) *The ten delegates are—*
  - (a) *four special delegates consisting of—*
    - (i) *the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces, and*
    - (ii) *three other special delegates, and*
  - (b) *six permanent delegates appointed in terms of section 61(2)*
- (3) *The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the Premier, heads the delegation*

#### 61. Allocation of delegates

- (1) *Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3*
- (2) *Within 30 days after the result of an election of a provincial legislature is declared, the legislature must—*
  - (a) *determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates, and*
  - (b) *appoint the permanent delegates in accordance with the nominations of the parties*
- (3) *The national legislation envisaged in sub-section (2)(a) must ensure the participation of minority parties in both the permanent and special*

delegates" components of the delegation in a manner consistent with democracy.

(4) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the province's delegation, must designate special delegates, as required from time to time, from among the members of the legislature

#### 62. Permanent delegates

(1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature

(2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.

(3) Permanent delegates are appointed for a term that expires immediately before the first sitting of the provincial legislature after its next election

(4) A person ceases to be a permanent delegate if that person—

(a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate,

(b) becomes a member of the Cabinet,

(c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person,

(d) ceases to be a member of the party that nominated that person and is recalled by that party, or

(e) is absent from the National Council of Provinces without permission in circumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate

(5) Vacancies among the permanent delegates must be filled in terms of national legislation

(6) Before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

#### 63. Sitzings of National Council

(1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods

(2) The President may summon the National Council of Provinces to an extraordinary sitting at any time to conduct special business

(3) Sitzings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, return or convenience, and if provided for in the rules and orders of the Council

#### 64. Chairperson and Deputy Chairpersons

(1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates

(2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their terms as delegates expire earlier.

(3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.

(4) The President of the Constitutional Court must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.

(5) The procedure set out in Part A of Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.

(6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.

(7) In terms of its rules and orders, the National Council of Provinces may elect from among the delegates other presiding officers to assist the Chairperson and Deputy Chairpersons.

## 65. Decisions

(1) Except where the Constitution provides otherwise—

(a) each province has one vote, which is cast on behalf of the province by the head of its delegation; and

(b) all questions before the National Council of Provinces are agreed when at least five provinces vote in favour of the question.

(2) An Act of Parliament, enacted in accordance with the procedure established by either sub-section (1) or sub-section (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

## 66. Participation by members of national executive

(1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.

(2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.

## 67. Participation by local government representatives

Not more than ten part-time representatives designated by organised local government in terms of section 163, to represent the different categories of municipalities, may participate when necessary in the proceedings of the National Council of Provinces, but may not vote.

## 68. Powers of National Council

In exercising its legislative power, the National Council of Provinces may—

(a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this Chapter, and

(b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76 (3), but may not initiate or prepare money Bills

#### 69. Evidence or information before National Council

The National Council of Provinces or any of its committees may—

(a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents,

(b) require any institution or person to report to it,

(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b), and

(d) receive petitions, representations or submissions from any interested persons or institutions

#### 70 Internal arrangements, proceedings and procedures of National Council

(1) The National Council of Provinces may—

(a) determine and control its internal arrangements, proceedings and procedures, and

(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement

(2) The rules and orders of the National Council of Provinces must provide for—

(a) the establishment, composition, powers, functions, procedures and duration of its committees,

(b) the participation of all the provinces in its proceedings in a manner consistent with democracy, and

(c) the participation in the proceedings of the Council and its committees of minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75

#### 71. Privilege

(1) Delegates to the National Council of Provinces and the persons referred to in sections 66 and 67—

(a) have freedom of speech in the Council and in its committees, subject to its rules and orders, and

(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

(i) anything that they have said in, produced before or submitted to the Council or any of its committees, or

(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees

(2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67 may be prescribed by national legislation

(3) Salaries, allowances and benefits payable to permanent members of the National Council of Provinces are a direct charge against the National Revenue Fund

## **72. Public access to and involvement in National Council**

(1) The National Council of Provinces must—

(a) facilitate public involvement in the legislative and other processes of the Council and its committees, and

(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—

(i) to regulate public access, including access of the media, to the Council and its committees, and

(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person

(2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society

## **TITLE 3**

### **NATIONAL LEGISLATIVE PROCESS**

#### **73. All Bills**

(1) Any Bill may be introduced in the National Assembly

(2) Only a Cabinet member or a Deputy Minister, or a member or committee of the Assembly, may introduce a Bill in the Assembly; but only the Cabinet member responsible for national financial matters may introduce a Money Bill in the Assembly

(3) A Bill referred to in section 76(3), except a Money Bill, may be introduced in the National Council of Provinces

(4) Only a member or committee of the National Council of Provinces may introduce a Bill in the Council

(5) A Bill passed by the National Assembly must be referred to the National Council of Provinces if it must be considered by the Council. A Bill passed by the Council must be referred to the Assembly

#### **74. Bills amending the Constitution**

(1) Section 1 and this sub-section may be amended by a Bill passed by—

(a) the National Assembly, with a supporting vote of at least 75 per cent of its members, and

(b) the National Council of Provinces, with a supporting vote of at least six provinces

(2) Chapter 2 may be amended by a Bill passed by—

(a) the National Assembly, with a supporting vote of at least two thirds of its members, and

(b) the National Council of Provinces, with a supporting vote of at least six provinces

(3) Any other provision of the Constitution may be amended by a Bill passed—

(a) by the National Assembly, with a supporting vote of at least two thirds of its members, and

(b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment—

(i) relates to a matter that affects the Council,

(ii) alters provincial boundaries, powers, functions or institutions,  
or

(iii) amends a provision that deals specifically with a provincial matter

(4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments

(5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must—

(a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment,

(b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views, and

(c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council

(6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures—

(a) to the Speaker for tabling in the National Assembly, and

(b) in respect of amendments referred to in sub-section (1), (2), or

(3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council

(7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of—

(a) its introduction, if the Assembly is sitting when the Bill is introduced, or

(b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced

(8) If a Bill referred to in sub-section (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned

(9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent

#### **75. Ordinary Bills not affecting provinces**

(1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure

(a) The Council must—

(i) pass the Bill,

(ii) pass the Bill subject to amendments proposed by it, or

(iii) reject the Bill

(b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent

(c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may—

(i) pass the Bill again, either with or without amendments, or

(ii) decide not to proceed with the Bill

(d) A Bill passed by the Assembly in terms of paragraph (c) must be submitted to the President for assent

(2) When the National Council of Provinces votes on a question in terms of this section, section 65 does not apply, instead—

(a) each delegate in a provincial delegation has one vote,

(b) at least one third of the delegates must be present before a vote may be taken on the question, and

(c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote

#### **76. Ordinary Bills affecting provinces**

(1) When the National Assembly passes a Bill referred to in sub-section (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure

(a) The Council must—

(i) pass the Bill,

(ii) pass an amended Bill, or

(iii) reject the Bill

(b) If the Council passes the Bill without amendment, the Bill must be submitted to the President for assent

(c) If the Council passes an amended Bill, the amended Bill must be referred to the Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent

(d) If the Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on—

(i) the Bill as passed by the Assembly,

(ii) the amended Bill as passed by the Council; or

(iii) another version of the Bill

(e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members

(f) If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if the Council passes the Bill, the Bill must be submitted to the President for assent

(g) If the Mediation Committee agrees on the amended Bill as passed by the Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent

(h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Assembly and the Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent

(i) If a Bill referred to the Council in terms of paragraph (f) or (h) is not passed by the Council, the Bill lapses unless the Assembly passes the Bill with a supporting vote of at least two thirds of its members

(j) If a Bill referred to the Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but with a supporting vote of at least two thirds of its members

(k) A Bill passed by the Assembly in terms of paragraph (c), (i) or (j) must be submitted to the President for assent

(2) When the National Council of Provinces passes a Bill referred to in sub-section (3) the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure

(a) The Assembly must—

(i) pass the Bill,

(ii) pass an amended Bill, or

(iii) reject the Bill

(b) A Bill passed by the Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.

(c) If the Assembly passes an amended Bill, the amended Bill must be referred to the Council, and if the Council passes the amended Bill, it must be submitted to the President for assent.

(d) If the Assembly rejects the Bill, or if the Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill must be referred to the Mediation Committee, which may agree on—

- (i) the Bill as passed by the Council;
- (ii) the amended Bill as passed by the Assembly; or
- (iii) another version of the Bill

(e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.

(f) If the Mediation Committee agrees on the Bill as passed by the Council, the Bill must be referred to the Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.

(g) If the Mediation Committee agrees on the amended Bill as passed by the Assembly, the Bill must be referred to the Council, and if it is passed by the Council, it must be submitted to the President for assent.

(h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Council and the Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.

(i) If a Bill referred to the Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.

(3) A Bill must be dealt with in accordance with the procedure established by either sub-section (1) or sub-section (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections—

- (a) Section 63(2);
- (b) section 163;
- (c) section 182;
- (d) section 195(3) and (4);
- (e) section 196, and
- (f) section 197.

(4) A Bill must be dealt with in accordance with the procedure established by sub-section (1) if it provides for legislation—

- (a) envisaged in section 44(2) or 220(3); or
- (b) envisaged in Chapter 13 and which affects the financial interests of the provincial sphere of government.

(5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established by sub-section (1) except that—

(a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply, instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it, and

(b) if the Bill is referred to the Mediation Committee, the following rules apply

(i) If the National Assembly considers a Bill envisaged in sub-section (1) (g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it

(ii) If the National Assembly considers or reconsiders a Bill envisaged in sub-section (1)(e), (i) or (j), that Bill may be passed only if at least two-thirds of the members of the Assembly vote in favour of it

(6) This section does not apply to Money Bills

## 77. Money Bills

(1) A Bill that appropriates money or imposes taxes, levies or duties is a Money Bill. A Money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties

(2) All Money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend Money Bills before Parliament

## 78. Mediation Committee

(1) The Mediation Committee consists of—

(a) nine members of the National Assembly elected by the Assembly in accordance with a procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly, and

(b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation

(2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of a question, is supported by—

(a) at least five of the representatives of the National Assembly, and

(b) at least five of the representatives of the National Council of Provinces

## 79. Assent to Bills

(1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration

(2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process

(3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly, if—

(a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council, or

(b) section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill

(4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either—

(a) assent to and sign the Bill, or

(b) refer it to the Constitutional Court for a decision on its constitutionality.

(5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it

## **80 Application by members of National Assembly to Constitutional Court**

(1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional

(2) An application—

(a) must be supported by at least one third of the members of the Assembly, and

(b) must be made within 30 days of the date on which the President assented to and signed the Act

(3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of sub-section (1) has no force until the Court has decided the application if—

(a) the interests of justice require this, and

(b) the application has a reasonable prospect of success

(4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs

## **81. Publication of Acts**

A Bill assented to and signed by the President becomes an Act of Parliament, must be published promptly, and takes effect when published or on a date determined in terms of the Act

## **82. Safekeeping of Acts of Parliament**

The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping

## CHAPTER 5

## THE PRESIDENT AND NATIONAL EXECUTIVE

## 83. The President

The President—

- (a) is the Head of State and head of the national executive,
- (b) must uphold, defend and respect the Constitution as the supreme law of the Republic, and
- (c) promotes the unity of the nation and that which will advance the Republic

## 84 Powers and functions of President

(1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive

(2) The President is responsible for—

- (a) assenting to and signing Bills
- (b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality,
- (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality,
- (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business,
- (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive,
- (f) appointing commissions of inquiry,
- (g) calling a national referendum in terms of an Act of Parliament,
- (h) receiving and recognising foreign diplomatic and consular representatives,
- (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives,
- (j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures, and
- (k) conferring honours

## 85 Executive authority of the Republic

- (1) The executive authority of the Republic is vested in the President
- (2) The President exercises the executive authority, together with the other members of the Cabinet, by—
  - (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise
  - (b) developing and implementing national policy,

(c) co-ordinating the functions of State departments and administrations,

(d) preparing and initiating legislation, and

(e) performing any other executive function provided for in the Constitution or in national legislation

#### **86. Election of President**

(1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President

(2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President

(3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional Court, but not more than 30 days after the vacancy occurs

#### **87. Assumption of office by President**

When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

#### **88. Term of office of President**

(1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office

(2) No person may hold office as President for more than two terms, but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term

#### **89. Removal of President**

(1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of—

(a) a serious violation of the Constitution or the law,

(b) serious misconduct, or

(c) inability to perform the functions of office

(2) Anyone who has been removed from the office of President in terms of sub-section (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office

#### **90. Acting President**

(1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President

(a) The Deputy President

(b) A Minister designated by the President

(c) A Minister designated by the other members of the Cabinet

(d) The Speaker, until the National Assembly designates one of its other members

(2) An Acting President has the responsibilities, powers and functions of the President

(3) Before assuming the responsibilities, powers and functions of the President, the Acting President must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

### 91. Cabinet

(1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers

(2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them

(3) The President—

(a) must select the Deputy President from among the members of the National Assembly,

(b) may select any number of Ministers from among the members of the Assembly, and

(c) may select not more than two Ministers from outside the Assembly.

(4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly

(5) The Deputy President must assist the President in the execution of the functions of government

### 92. Accountability and responsibilities

(1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President

(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions

(3) Members of the Cabinet must—

(a) act in accordance with the Constitution, and

(b) provide Parliament with full and regular reports concerning matters under their control

### 93. Deputy Ministers

The President may appoint Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them

### 94. Continuation of Cabinet after elections

When an election of the National Assembly is held, the Cabinet, the

Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

### 95. Oath or affirmation

Before the Deputy President, Ministers and any Deputy Ministers begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

### 96. Conduct of Cabinet members and Deputy Ministers

(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation

(2) Members of the Cabinet and Deputy Ministers may not—

(a) undertake any other paid work,

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, or

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person

### 97. Transfer of functions

The President by proclamation may transfer to a member of the Cabinet—

(a) the administration of any legislation entrusted to another member, or

(b) any power or function entrusted by legislation to another member

### 98. Temporary assignment of functions

The President may assign to a Cabinet member any power or function of another member who is absent from office or is unable to exercise that power or perform that function

### 99. Assignment of functions

A Cabinet member may assign any power or function that is to be performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. An assignment—

(a) must be in terms of an agreement between the relevant Cabinet member and the Executive Council member or Municipal Council,

(b) must be consistent with that of Parliament in terms of which the relevant power or function is exercised or performed, and

(c) takes effect upon proclamation by the President

### 100. National supervision of provincial administration

(1) When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation,

(a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations, and

(b) assuming responsibility for the relevant obligation in that province to the extent necessary to—

(i) maintain essential national standards or meet established minimum standards for the rendering of a service,

(ii) maintain economic unity,

(iii) maintain national security, or

(iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole

(2) If the national executive intervenes in a province in terms of sub-section (1)(b)—

(a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began,

(b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began, and

(c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive

(3) National legislation may regulate the process established by this section

#### 101. Executive decisions

(1) A decision by the President must be in writing if it—

(a) is taken in terms of legislation; or

(b) has legal consequences

(2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member

(3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public

(4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in sub-section (3) must be—

(a) tabled in Parliament, and

(b) approved by Parliament

#### 102. Motions of no confidence

(1) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President the President must reconstitute the Cabinet

(2) If the National Assembly, by a vote supported by a majority of its members passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign

## CHAPTER 6 PROVINCES

### TITLE 0 GENERAL PROVISION

#### 103. Provinces

(1) The Republic has the following provinces

- (a) Eastern Cape
- (b) Free State
- (c) Gauteng
- (d) KwaZulu-Natal
- (e) Mpumalanga
- (f) Northern Cape
- (g) Northern Province
- (h) North West
- (i) Western Cape

(2) The boundaries of the provinces are those that existed when the Constitution took effect

### TITLE 1 PROVINCIAL LEGISLATURES

#### 104. Legislative authority of provinces

(1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power—

(a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143,

(b) to pass legislation for its province with regard to—

- (i) any matter within a functional area listed in Schedule 4,
- (ii) any matter within a functional area listed in Schedule 5,
- (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation, and
- (iv) any matter for which a provision of the Constitution envisages the enactment of provincial legislation, and

(c) to assign any of its legislative powers to a Municipal Council in that province

(2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province

(3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that constitution, and must

act in accordance with, and within the limits of, the Constitution and that provincial constitution

(4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4

(5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law

#### 105 Composition and election of provincial legislatures

(1) A provincial legislature consists of women and men elected as members in terms of an electoral system that—

- (a) is prescribed by national legislation,
- (b) is based on that province's segment of the national common voters roll,
- (c) provides for a minimum voting age of 18 years, and
- (d) results, in general, in proportional representation

(2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation

#### 106 Membership

(1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except—

(a) anyone who is appointed by, or is in the service of, the State and receives remuneration for that appointment or service, other than—

(i) the Premier and other members of the Executive Council of a province, and

(ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation,

(b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council,

(c) unrehabilitated insolvents,

(d) anyone declared to be of unsound mind by a court of the Republic, or

(e) anyone who after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed

(2) A person who is not eligible to be a member of a provincial legislature in terms of sub-section (1) (a) or (b) may be a candidate for the legislature, subject to any limits or conditions established by national legislation

(3) A person loses membership of a provincial legislature if that person--

(a) ceases to be eligible, or

(b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership

(4) Vacancies in a provincial legislature must be filled in terms of national legislation

#### 107. Oath or affirmation

Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

#### 108. Duration of provincial legislatures

(1) A provincial legislature is elected for a term of five years

(2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved or its term expired

(3) If the result of an election of a provincial legislature is not declared within the period referred to in section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside

(4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature

#### 109. Dissolution of provincial legislatures before expiry of term

(1) The Premier of a province must dissolve the provincial legislature if--

(a) the legislature has adopted a resolution to dissolve with a supporting vote of a majority of its members, and

(b) three years have passed since the legislature was elected

(2) An Acting Premier must dissolve the provincial legislature if--

(a) there is a vacancy in the office of Premier; and

(b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred

#### 110. Sittings and recess periods

(1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the President of the Constitutional Court, but not more than 14 days after the

election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.

(2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.

(3) A provincial legislature may determine where it ordinarily will sit.

#### 111. Speakers and Deputy Speakers

(1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.

(2) A judge designated by the President of the Constitutional Court must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.

(3) The procedure set out in Part A of Schedule 3 applies to the election of Speakers and Deputy Speakers.

(4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.

(5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

#### 112. Decisions

(1) Except where the Constitution provides otherwise—

(a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill,

(b) at least one third of the members must be present before a vote may be taken on any other question before the legislature, and

(c) all questions before a provincial legislature are decided by a majority of the votes cast.

(2) The member presiding at a meeting of a provincial legislature has no deliberative vote, but—

(a) must cast a deciding vote when there is an equal number of votes on each side of a question, and

(b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the legislature.

#### 113. Permanent delegates' rights in provincial legislatures

A province's permanent delegates to the National Council of Provinces may attend, and may speak in, their provincial legislature and its committees, but may not vote. The legislature may require a permanent delegate to attend the legislature or its committees.

#### 114. Powers of provincial legislatures

(1) In exercising its legislative power, a provincial legislature may—

- (a) consider, pass, amend or reject any Bill before the legislature; and
- (b) initiate or prepare legislation, except Money Bills.

(2) A provincial legislature must provide for mechanisms—

- (a) to ensure that all provincial executive organs of State in the province are accountable to it; and
- (b) to maintain oversight of—
  - (i) the exercise of provincial executive authority in the province including the implementation of legislation; and
  - (ii) any provincial organ of State.

**115. Evidence or information before provincial legislatures**

A provincial legislature or any of its committees may—

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) require any person or provincial institution to report to it;
- (c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

**116. Internal arrangements, proceedings and procedures of provincial legislatures**

(1) A provincial legislature may—

- (a) determine and control its internal arrangements, proceedings and procedures; and
- (b) make rules and orders concerning its business with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of a provincial legislature must provide for—

- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
- (b) the participation in the proceedings of the legislature and its committees of minority parties represented in the legislature in a manner consistent with democracy;
- (c) financial and administrative assistance to each party represented in the legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the legislature effectively; and
- (d) the recognition of the leader of the largest opposition party in the legislature as the Leader of the Opposition.

**117. Privilege**

(1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces—

(a) have freedom of speech in the legislature and in its committees, subject to its rules and orders, and

(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

(i) anything that they have said in, produced before or submitted to the legislature or any of its committees, or

(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the legislature or any of its committees

(2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation

(3) Salaries, allowances and benefits payable to members of a provincial legislature are a direct charge against the Provincial Revenue Fund

#### 118 Public access to and involvement in provincial legislatures

(1) A provincial legislature must—

(a) facilitate public involvement in the legislative and other processes of the legislature and its committees, and

(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—

(i) to regulate public access, including access of the media, to the legislature and its committees, and

(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person

(2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society

#### 119. Introduction of Bills

Only members of the Executive Council of a province or a committee or member of a provincial legislature may introduce a Bill in the legislature, but only the member of the Executive Council who is responsible for financial matters in the province may introduce a Money Bill in the legislature

#### 120 Money Bills

(1) A Bill that appropriates money or imposes taxes, levies or duties is a Money Bill. A Money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties

(2) A provincial Act must provide for a procedure by which the province's legislature may amend a Money Bill

#### 121. Assent to Bills

(1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature in terms of this Chapter or, if the Premier has

reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.

(2) If, after reconsideration a Bill fully accommodates the Premier's reservations, the Premier must assent to and sign the Bill: if not, the Premier must either—

(a) assent to and sign the Bill; or

(b) refer it to the Constitutional Court for a decision on its constitutionality.

(3) If the Constitutional Court decides that the Bill is constitutional the Premier must assent to and sign it.

## 122. Application by members to Constitutional Court

(1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.

(2) An application—

(a) must be supported by at least 20 per cent of the members of the legislature, and

(b) must be made within 30 days of the date on which the Premier assented to and signed the Act.

(3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of sub-section (1) has no force until the Court has decided the application if—

(a) the interests of justice require this; and

(b) the application has a reasonable prospect of success

(4) If an application is unsuccessful, and did not have a reasonable prospect of success the Constitutional Court may order the applicants to pay costs.

## 123. Publication of provincial Acts

A Bill assented to and signed by the Premier of a province becomes a provincial Act, must be published promptly and takes effect when published or on a date determined in terms of the Act.

## 124. Safekeeping of provincial Acts

The signed copy of a provincial Act is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping

## TITLE 2

### PROVINCIAL EXECUTIVES

## 125. Executive authority of provinces

(1) The executive authority of a province is vested in the Premier of that province.

(2) The Premier exercises the executive authority, together with the other members of the Executive Council, by—

(a) implementing provincial legislation in the province,

(b) implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise,

(c) administering in the province, national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament,

(d) developing and implementing provincial policy,

(e) co-ordinating the functions of the provincial administration and its departments,

(f) preparing and initiating provincial legislation, and

(g) performing any other function assigned to the provincial executive in terms of the Constitution or an Act of Parliament

(3) A province has executive authority in terms of sub-section (2) (b) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in sub-section (2).

(4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council

(5) Subject to section 100, the implementation of provincial legislation in a province is an exclusive provincial executive power

(6) The provincial executive must act in accordance with—

(a) the Constitution, and

(b) the provincial constitution, if a constitution has been passed for the province

#### 126 Assignment of functions

A member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council. An assignment—

(a) must be in terms of an agreement between the relevant Executive Council member and the Municipal Council

(b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed, and

(c) takes effect upon proclamation by the Premier

#### 127 Powers and functions of Premiers

(1) The Premier of a province has the powers and functions entrusted to him by the Constitution and any legislation

(2) The Premier of a province is responsible for—

- (a) assenting to and signing Bills,
- (b) referring a Bill back to the provincial legislature for reconsideration of the Bill's constitutionality,
- (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality,
- (d) summoning the legislature to an extraordinary sitting to conduct special business,
- (e) appointing commissions of inquiry, and
- (f) calling a referendum in the province in accordance with national legislation

### 128. Election of Premiers

(1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province

(2) A judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier

(3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the President of the Constitutional Court, but not later than 30 days after the vacancy occurs

### 129. Assumption of office by Premiers

A Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

### 130. Term of office and removal of Premiers

(1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office

(2) No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term

(3) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of—

- (a) a serious violation of the Constitution or the law,
- (b) serious misconduct, or
- (c) inability to perform the functions of office

(4) Anyone who has been removed from the office of Premier in terms of sub-section (3) (a) or (b) may not receive any benefits of that office, and may not serve in any public office

**131. Acting Premiers**

(1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier

(a) A member of the Executive Council designated by the Premier

(b) A member of the Executive Council designated by the other members of the Council

(c) The Speaker, until the legislature designates one of its other members

(2) An Acting Premier has the responsibilities, powers and functions of the Premier

(3) Before assuming the responsibilities, powers and, functions of the Premier, the Acting Premier must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

**132. Executive Councils**

(1) The Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature

(2) The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them

**133. Accountability and responsibilities**

(1) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier

(2) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions

(3) Members of the Executive Council of a province must—

(a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution, and

(b) provide the legislature with full and regular reports concerning matters under their control

**134. Continuation of Executive Councils after elections**

When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office

**135. Oath or affirmation**

Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2

**136. Conduct of members of Executive Councils**

(1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation

(2) Members of the Executive Council of a province may not—

(a) undertake any other paid work,

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, or

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person

**137. Transfer of functions**

The Premier by proclamation may transfer to a member of the Executive Council—

(a) the administration of any legislation entrusted to another member, or

(b) any power or function entrusted by legislation to another member

**138. Temporary assignment of functions**

The Premier of a province may assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function

**139. Provincial supervision of local government**

(1) When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—

(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations, and

(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary—

(i) to maintain essential national standards or meet established minimum standards for the rendering of a service,

(ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole, or

(iii) to maintain economic unity

(2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)—

(a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention,

(b) notice of the intervention must be tabled in the provincial legislature and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began,

(c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began, and

(d) the Council must review the intervention regularly and make any appropriate recommendations to the provincial executive

(3) National legislation may regulate the process established by this section

#### 140. Executive decisions

(1) A decision by the Premier of a province must be in writing if it—

(a) is taken in terms of legislation, or

(b) has legal consequences

(2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member

(3) Proclamations, regulations and other instruments of subordinate legislation of a province must be accessible to the public

(4) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in sub-section (3) must be—

(a) tabled in the provincial legislature, and

(b) approved by the provincial legislature

#### 141. Motions of no confidence

(1) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council

(2) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Premier, the Premier and the other members of the Executive Council must resign

### TITLE 3

## PROVINCIAL CONSTITUTIONS

#### 142 Adoption of provincial constitutions

A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill

#### 143. Contents of provincial constitutions

(1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution but may provide for—

(a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter, or

(b) the institution, role, authority and status of a traditional monarch, where applicable

(2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraph (a) or (b) of sub-section (1)—

(a) must comply with the values in section 1 and with Chapter 3, and

(b) may not confer on the province any power or function that falls—

(i) outside the area of provincial competence in terms of Schedules 4 and 5, or

(ii) outside the powers and functions conferred on the province by other sections of the Constitution

#### 144. Certification of provincial constitutions

(1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution or constitutional amendment to the Constitutional Court for certification

(2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified—

(a) that the text has been passed in accordance with section 142, and

(b) that the whole text complies with section 143

#### 145. Signing, publication and safekeeping of provincial constitutions

(1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court

(2) The text assented to and signed by the Premier must be published in the national Government Gazette and takes effect on publication or on a later date determined in terms of that constitution or amendment

(3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping

### TITLE 4

## CONFLICTING LAWS

#### 146. Conflicts between national and provincial legislation

(1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4

(2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met

(a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually

(b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—

- (i) norms and standards,
- (ii) frameworks, or
- (iii) national policies

(c) The national legislation is necessary for—

- (i) the maintenance of national security;
- (ii) the maintenance of economic unity,
- (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour,
- (iv) the promotion of economic activities across provincial boundaries,
- (v) the promotion of equal opportunity or equal access to government services, or
- (vi) the protection of the environment

(3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that —

(a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or

(b) impedes the implementation of national economic policy

(4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in sub-section (2)(c) and that dispute comes before a court for resolution, the court must have due regard to the approval or the rejection of the legislation by the National Council of Provinces

(5) Provincial legislation prevails over national legislation if sub-section (2) or (3) does not apply

(6) A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces

(7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council

(8) If the National Council of Provinces does not approve a law referred to in sub-section (6), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it

#### 147. Other conflicts

(1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to—

- (a) a matter, concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution,

(b) national legislative intervention in terms of section 44(2), the national legislation prevails over the provision of the provincial constitution; or

(c) a matter within a functional area listed in Schedule 4, section 146 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section

(2) National legislation referred to in section 44(2) prevails over provincial legislation in respect of matters within the functional areas listed in Schedule 5.

#### 148. Conflicts that cannot be resolved

If a dispute concerning a conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution

#### 149. Status of legislation that does not prevail

A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains

#### 150. Interpretation of conflicts

When considering an apparent conflict between national and provincial legislation, or between national legislation and a provincial constitution, every court must prefer any reasonable interpretation of the legislation or constitution that avoids a conflict over any alternative interpretation that results in a conflict.

## CHAPTER 7 LOCAL GOVERNMENT

#### 151. Status of municipalities

(1) The local sphere of government consists of municipalities which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern on its own initiative the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions

#### 152. Objects of local government

(1) The objects of local government are.

(2) To provide democratic and accountable government for local communities,

(b) to ensure the provision of services to communities in a sustainable manner,

(c) to promote social and economic development,

(d) to promote a safe and healthy environment, and

(e) to encourage the involvement of communities and community organisations in the matters of local government

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in sub-section (1)

### 153. Developmental duties of municipalities

A municipality must—

(a) structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community, and

(b) participate in national and provincial development programmes

### 154. Municipalities in co-operative government

(1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions

(2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation

### 155. Establishment of municipalities

(1) There are the following categories of municipality

(a) Category A A municipality that has exclusive municipal executive and legislative authority in its area

(b) Category B A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls

(c) Category C A municipality that has municipal executive and legislative authority in an area that includes more than one municipality

(2) National legislation must define the different types of municipality that may be established within each category

(3) National legislation must—

(a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C

(b) establish criteria and procedures for the determination of municipal boundaries by an independent authority, and

(c) subject to section 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality

(4) The legislation referred to in sub-section (3) must take into account the need to provide municipal services in an equitable and sustainable manner

(5) Provincial legislation must determine the different types of municipality to be established in the province

(6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of sub-sections (2) and (3) and, by legislative or other measures, must—

(a) provide for the monitoring and support of local government in the province, and

(b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs

(7) The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)

#### **156. Powers and functions of municipalities**

(1) A municipality has executive authority in respect of, and has the right to administer—

(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5, and

(b) any other matter assigned to it by national or provincial legislation

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer

(3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative

(4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if—

- (a) that matter would most effectively be administered locally, and
- (b) the municipality has the capacity to administer it

(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions

#### 157. Composition and election of Municipal Councils

(1) A Municipal Council consists of—

(a) members elected in accordance with sub-sections (2), (3), (4) and (5); or

(b) if provided for by national legislation—

(i) members appointed by other Municipal Councils to represent those other Councils, or

(ii) both members elected in accordance with paragraph (a) and members appointed in accordance with sub-paragraph (i) of this paragraph

(2) The election of members to a Municipal Council as anticipated in sub section (1)(a) must be in accordance with national legislation, which must prescribe a system—

(a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference, or

(b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voters roll

(3) An electoral system in terms of sub-section (2) must ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties

(4) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation

(5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voters roll

(6) The national legislation referred to in sub-section (1)(b) must establish a system that allows for parties and interests reflected within the Municipal Council making the appointment, to be fairly represented in the Municipal Council to which the appointment is made

#### 158 Membership of Municipal Councils

(1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except—

(a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service,

and who has not been exempted from this disqualification in terms of national legislation,

(b) anyone who is appointed by, or is in the service of, the State in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of a Municipal Council in terms of national legislation,

(c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 47(1)(c), (d) or (e) from being a member of the Assembly,

(d) a member of the National Assembly, a delegate to the National Council of Provinces or a member of a provincial legislature, but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council, or

(e) a member of another Municipal Council, but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category

(2) A person who is not eligible to be a member of a Municipal Council in terms of sub-section (1)(a), (b), (d) or (e) may be a candidate for the Council, subject to any limits or conditions established by national legislation.

### 159. Terms of Municipal Councils

The term of a Municipal Council may be no more than four years, as determined by national legislation

### 160. Internal procedures

#### (1) A Municipal Council—

(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality,

(b) must elect its chairperson,

(c) may elect an executive committee and other committees, subject to national legislation; and

(d) may employ personnel that are necessary for the effective performance of its functions

#### (2) The following functions may not be delegated by a Municipal Council

(a) The passing of by-laws,

(b) the approval of budgets,

(c) the imposition of rates and other taxes, levies and duties, and

(d) the raising of loans

(3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter

(b) All questions concerning matters mentioned in sub-section (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members

(c) All other questions before a Municipal Council are decided by a majority of the votes cast.

(4) No by-law may be passed by a Municipal Council unless—

(a) all the members of the Council have been given reasonable notice, and

(b) the proposed by-law has been published for public comment

(5) National legislation may provide criteria for determining—

(a) the size of a Municipal Council,

(b) whether Municipal Councils may elect an executive committee or any other committee, or

(c) the size of the executive committee or any other committee of a Municipal Council,

(6) A Municipal Council may make by-laws which prescribe rules and orders for—

(a) its internal arrangements;

(b) its business and proceedings, and

(c) the establishment, composition, procedures, powers and functions of its committees

(7) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted

(8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that—

(a) allows parties and interests reflected within the Council to be fairly represented,

(b) is consistent with democracy, and

(c) may be regulated by national legislation

#### 161. Privilege

Provincial legislation within the framework of national legislation may provide for privileges and immunities of Municipal Councils and their members

#### 162. Publication of municipal by-laws

(1) A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province

(2) A provincial official gazette must publish a municipal by-law upon request by the municipality

(3) Municipal by-laws must be accessible to the public

#### 163 Organised local government

An Act of Parliament enacted in accordance with the procedure established by section 76 must—

(a) provide for the recognition of national and provincial organisations representing municipalities, and

(b) determine procedures by which local government may—

(i) consult with the national or a provincial government,

(ii) designate representatives to participate in the National Council of Provinces, and

(iii) nominate persons to the Financial and Fiscal Commission

#### 164. Other matters

Any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation

### CHAPTER 8

## COURTS AND ADMINISTRATION OF JUSTICE

#### 165. Judicial authority

(1) The judicial authority of the Republic is vested in the courts

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice

(3) No person or organ of State may interfere with the functioning of the courts

(4) Organs of State, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts

(5) An order or decision issued by a court binds all persons to whom and organs of State to which it applies

#### 166. Judicial system

The courts are—

(a) the Constitutional Court,

(b) the Supreme Court of Appeal,

(c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts,

(d) the Magistrates' Courts, and

(e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts

#### 167. Constitutional Court

(1) The Constitutional Court consists of a President, a Deputy President and nine other judges

(2) A matter before the Constitutional Court must be heard by at least eight judges

## (3) The Constitutional Court—

- (a) is the highest court in all constitutional matters,
- (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and
- (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter

## (4) Only the Constitutional Court may—

- (a) decide disputes between organs of State in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of State,
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 or 121,
- (c) decide applications envisaged in section 80 or 122,
- (d) decide on the constitutionality of any amendment to the Constitution;
- (e) decide that Parliament or the President has failed to fulfil a constitutional obligation, or
- (f) certify a provincial constitution in terms of section 144

(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force

(6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—

- (a) to bring a matter directly to the Constitutional Court, or
- (b) to appeal directly to the Constitutional Court from any other court

(7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution

## 168 Supreme Court of Appeal

(1) The Supreme Court of Appeal consists of a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament

(2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament

(3) The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only—

- (a) appeals

- (b) issues connected with appeals, and
- (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament

### 169. High Courts

A High Court may decide—

- (a) any constitutional matter except a matter that—
  - (i) only the Constitutional Court may decide, or
  - (ii) is assigned by an Act of Parliament to another court of a status similar to a High Court, and
- (b) any other matter not assigned to another court by an Act of Parliament

### 170. Magistrates' Courts and other courts

Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a High Court may not enquire into or rule on the constitutionality of any legislation or any conduct of the President

### 171. Court procedures

All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation

### 172. Powers of courts in constitutional matters

- (1) When deciding a constitutional matter within its power, a court—

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency, and

(b) may make any order that is just and equitable, including—

(i) an order limiting the retrospective effect of the declaration of invalidity, and

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect

(2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court

(b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct

(c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court

(d) Any person or organ of State with a sufficient interest may appeal, or

apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this sub-section

### 173 Inherent power

The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice

### 174. Appointment of judicial officers

(1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen

(2) The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed

(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court and, after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice

(4) The other judges of the Constitutional Court are appointed by the President as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure

(a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President

(b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made

(c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list

(5) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court

(6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission

(7) Other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of or disciplinary steps against these judicial officers take place without favour or prejudice

(8) Before judicial officers begin to perform their functions, they must take an oath or affirm in accordance with Schedule 2 that they will uphold and protect the Constitution

**175. Acting judges**

(1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the President of the Constitutional Court and the Chief Justice.

(2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve.

**176. Terms of office and remuneration**

(1) A Constitutional Court judge is appointed for a non-renewable term of 12 years, but must retire at the age of 70.

(2) Other judges hold office until they are discharged from active service in terms of an Act of Parliament.

(3) The salaries, allowances and benefits of judges may not be reduced.

**177. Removal**

(1) A judge may be removed from office only if—

(a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, and

(b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.

(2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.

(3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of sub-section (1).

**178. Judicial Service Commission**

(1) There is a Judicial Service Commission consisting of—

- (a) the Chief Justice, who presides at meetings of the Commission,
- (b) the President of the Constitutional Court,
- (c) one Judge President designated by the Judges President,
- (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member,

(e) two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President,

(f) two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President,

(g) one teacher of law designated by teachers of law at South African universities,

(h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly,

(i) four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces,

(j) four persons designated by the President as head of the national executive after consulting the leaders of all the parties in the National Assembly, and

(k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier, of the province concerned

(2) If the number of persons nominated from within the advocates' or attorneys' profession in terms of sub-section (1)(e) or (f) equals the number of vacancies to be filled, the President must appoint them. If the number of persons nominated exceeds the number of vacancies to be filled, the President, after consulting the relevant profession, must appoint sufficient of the nominees to fill the vacancies, taking into account the need to ensure that those appointed represent the profession as a whole

(3) Members of the Commission designated by the National Council of Provinces serve until they are replaced together, or until any vacancy occurs in their number. Other members who were designated or nominated to the Commission serve until they are replaced by those who designated or nominated them

(4) The Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation

(5) The Judicial Service Commission may advise the national government on any matter relating to the judiciary or the administration of justice, but when it considers any matter except the appointment of a judge, it must sit without the members designated in terms of sub-section (1) (h) and (i)

(6) The Judicial Service Commission may determine its own procedure, but decisions of the Commission must be supported by a majority of its members

#### 179. Prosecuting authority

(1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of—

(a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President as head of the national executive, and

(b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament

(2) The prosecuting authority has the power to institute criminal proceedings on behalf of the State, and to carry out any necessary functions relating to instituting criminal proceedings

(3) National legislation must ensure that the Directors of Public Prosecutions—

(a) are appropriately qualified; and

(b) are responsible for prosecutions in specific jurisdictions subject to sub-section (5).

(4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.

(5) The National Director of Public Prosecutions—

(a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions prosecution policy which must be observed in the prosecution process

(b) must issue policy directives which must be observed in the prosecution process

(c) may intervene in the prosecution process when policy directives are not complied with; and

(d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:

(i) The accused person.

(ii) The complainant.

(iii) Any other person or party whom the National Director considers to be relevant.

(6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.

(7) All other matters concerning the prosecuting authority must be determined by national legislation.

#### 180. Other matters concerning administration of justice

National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including—

(a) training programmes for judicial officers

(b) procedures for dealing with complaints about judicial officers; and

(c) the participation of people other than judicial officers in court decisions

# CHAPTER 9

## STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

### TITLE 0

#### GENERAL PROVISION

##### 181. Establishment and governing principles

(1) The following State institutions strengthen constitutional democracy in the Republic

(a) The Public Protector

(b) The Human Rights Commission

(c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

(d) The Commission for Gender Equality

(e) The Auditor-General

(f) The Electoral Commission

(2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice

(3) Other organs of State, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions

(4) No person or organ of State may interfere with the functioning of these institutions

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year

### TITLE 1

#### PUBLIC PROTECTOR

##### 182 Functions of Public Protector

(1) The Public Protector has the power as regulated by national legislation—

(a) to investigate any conduct in State affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice

(b) to report on that conduct, and

(c) to take appropriate remedial action

(2) The Public Protector has the additional powers and functions prescribed by national legislation

(3) The Public Protector may not investigate court decisions

(4) The Public Protector must be accessible to all persons and communities

(5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential

### **183. Tenure**

The Public Protector is appointed for a non-renewable period of seven years

## **TITLE 2**

### **HUMAN RIGHTS COMMISSION**

#### **184. Functions of Human Rights Commission**

(1) The Human Rights Commission must—

(a) promote respect for human rights and a culture of human rights,

(b) promote the protection, development and attainment of human rights, and

(c) monitor and assess the observance of human rights in the Republic

(2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power —

(a) to investigate and to report on the observance of human rights,

(b) to take steps to secure appropriate redress where human rights have been violated,

(c) to carry out research, and

(d) to educate

(3) Each year, the Human Rights Commission must require relevant organs of State to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment

(4) The Human Rights Commission has the additional powers and functions prescribed by national legislation

### TITLE 3

## COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

### 185. Functions of Commission

(1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are—

(a) to promote respect for the rights of cultural, religious and linguistic communities,

(b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association, and

(c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa

(2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities

(3) The Commission may report any matter which falls within its powers and functions to the Human Rights Commission for investigation

(4) The Commission has the additional powers and functions prescribed by national legislation

### 186. Composition of Commission

(1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation

(2) The composition of the Commission must—

(a) be broadly representative of the main cultural, religious and linguistic communities in South Africa, and

(b) broadly reflect the gender composition of South Africa

### TITLE 4

## COMMISSION FOR GENDER EQUALITY

### 187. Functions of Commission for Gender Equality

(1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

(2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality

(3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation

## ***TITLE 5***

### **AUDITOR-GENERAL**

#### **188. Functions of Auditor-General**

(1) The Auditor-General must audit and report on the accounts, financial Statements and financial management of—

(a) all national and provincial State departments and administrations,

(b) all municipalities, and

(c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General

(2) In addition to the duties prescribed in sub-section (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial Statements and financial management of—

(a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality, or

(b) any institution that is authorised in terms of any law to receive money for a public purpose

(3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public

(4) The Auditor-General has the additional powers and functions prescribed by national legislation

#### **189. Tenure**

The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years

## ***TITLE 6***

### **ELECTORAL COMMISSION**

#### **190. Functions of Electoral Commission**

(1) The Electoral Commission must—

(a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation,

(b) ensure that those elections are free and fair, and

(c) declare the results of those elections within a period that must be

prescribed by national legislation and that is as short as reasonably possible

(2) The Electoral Commission has the additional powers and functions prescribed by national legislation

#### 191. Composition of Electoral Commission

The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation

### TITLE 7

## INDEPENDENT AUTHORITY TO REGULATE BROADCASTING

#### 192. Broadcasting Authority

National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society

### TITLE 8

## GENERAL PROVISIONS

#### 193. Appointments

(1) The Public Protector and members of any Commission established by this Chapter must be women or men who—

(a) are South African citizens,

(b) are fit and proper persons to hold the particular office, and

(c) comply with any other requirements prescribed by national legislation

(2) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed

(3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, State finances and public administration must be given due regard in appointing the Auditor-General

(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and members of—

(a) the Human Rights Commission,

(b) the Commission for Gender Equality, and

(c) the Electoral Commission

(5) The National Assembly must recommend persons—

(a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly, and

(b) approved by the Assembly by a resolution adopted with a supporting vote—

(i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General, or

(ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission

(6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a)

#### 194. Removal from office

(1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on—

(a) the ground of misconduct, incapacity or incompetence,

(b) a finding to that effect by a committee of the National Assembly, and

(c) the adoption by the Assembly of a resolution calling for that person's removal from office

(2) A resolution of the National Assembly concerning the removal from office of—

(a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly, or

(b) a member of a commission must be adopted with a supporting vote of a majority of the members of the Assembly

(2) The President—

(a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal

## CHAPTER 10 PUBLIC ADMINISTRATION

### 195. Basic values and principles governing public administration

(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles

(a) A high standard of professional ethics must be promoted and maintained

(b) Efficient, economic and effective use of resources must be promoted.

- (c) Public administration must be development-oriented
  - (d) Services must be provided impartially, fairly, equitably and without bias
  - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making
  - (f) Public administration must be accountable
  - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information
  - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated
  - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation
- (2) The above principles apply to—
- (a) administration in every sphere of government,
  - (b) organs of State, and
  - (c) public enterprises
- (3) National legislation must ensure the promotion of the values and principles listed in sub-section (1)
- (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service
- (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions
- (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration

#### 196 Public Service Commission

- (1) There is a single Public Service Commission for the Republic
- (2) The Commission is independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The Commission must be regulated by national legislation
- (3) Other organs of State, through legislative and other measures, must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of State may interfere with the functioning of the Commission
- (4) The powers and functions of the Commission are
  - (a) To promote the values and principles set out in section 195 throughout the public service.

(b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service,

(c) to propose measures to ensure effective and efficient performance within the public service,

(d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195,

(e) to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with, and

(f) either of its own accord or on receipt of any complaint—

(i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature,

(ii) to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies,

(iii) to monitor and investigate adherence to applicable procedures in the public service; and

(iv) to advise national and provincial organs of State regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service

(5) The Commission is accountable to the National Assembly

(6) The Commission must report at least once a year in terms of sub-section (4)(e)—

(a) to the National Assembly, and

(b) in respect of its activities in a province, to the legislature of that province

(7) The Commission has the following 14 commissioners appointed by the President

(a) Five commissioners approved by the National Assembly in accordance with sub-section (8)(a), and

(b) one commissioner for each province nominated by the Premier of the province in accordance with sub-section (8)(b)

(8) (a) A commissioner appointed in terms of sub-section (7)(a) must be—

(i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly, and

(ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members

(b) A commissioner nominated by the Premier of a province must be—

(i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature, and

(ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members

(9) An Act of Parliament must regulate the procedure for the appointment of commissioners

(10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is—

(a) a South African citizen, and

(b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services

(11) A commissioner may be removed from office only on—

(a) the ground of misconduct, incapacity or incompetence,

(b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province, and

(c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office

(12) The President must remove the relevant commissioner from office upon—

(a) the adoption by the Assembly of a resolution calling for that commissioner's removal, or

(b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal

(13) Commissioners referred to in sub-section (7)(b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation

### 197. Public Service

(1) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day

(2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation

(3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause

(4) Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public

service in their administrations within a framework of uniform norms and standards applying to the public service

## CHAPTER 11 SECURITY SERVICES

### TITLE 0 GENERAL PROVISIONS

#### 198. Governing principles

The following principles govern national security in the Republic

(a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life

(b) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation

(c) National security must be pursued in compliance with the law, including international law

(d) National security is subject to the authority of Parliament and the national executive

#### 199. Establishment, structuring and conduct of security services

(1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution

(2) The defence force is the only lawful military force in the Republic

(3) Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation

(4) The security services must be structured and regulated by national legislation

(5) The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic

(6) No member of any security service may obey a manifestly illegal order

(7) Neither the security services, nor any of their members, may, in the performance of their functions—

(a) prejudice a political party interest that is legitimate in terms of the Constitution, or

(b) further, in a partisan manner, any interest of a political party

(8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament

## ***TITLE 1***

### **DEFENCE**

#### **200 Defence force**

(1) The defence force must be structured and managed as a disciplined military force

(2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force

#### **201. Political responsibility**

(1) A member of the Cabinet must be responsible for defence

(2) Only the President, as head of the national executive, may authorise the employment of the defence force—

(a) in co-operation with the police service,

(b) in defence of the Republic, or

(c) in fulfilment of an international obligation

(3) When the defence force is employed for any purpose mentioned in sub-section (2), the President must inform Parliament, promptly and in appropriate detail, of—

(a) the reasons for the employment of the defence force,

(b) any place where the force is being employed,

(c) the number of people involved, and

(d) the period for which the force is expected to be employed

(4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in sub-section (2), the President must provide the information required in sub-section (3) to the appropriate oversight committee

#### **202. Command of defence force**

(1) The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint the Military Command of the defence force

(2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence, under the authority of the President

**203. State of national defence**

(1) The President as head of the national executive may declare a State of national defence, and must inform Parliament promptly and in appropriate detail of—

- (a) the reasons for the declaration,
- (b) any place where the defence force is being employed, and
- (c) the number of people involved

(2) If Parliament is not sitting when a State of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration

(3) A declaration of a State of national defence lapses unless it is approved by Parliament within seven days of the declaration

**204. Defence civilian secretariat**

A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence

**TITLE 2****POLICE****205. Police service**

(1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government

(2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces

(3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law

**206. Political responsibility**

(1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives

(2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces

(3) Each province is entitled—

- (a) to monitor police conduct,
- (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service,

- (c) to promote good relations between the police and the community
- (d) to assess the effectiveness of visible policing, and
- (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province
- (4) A provincial executive is responsible for policing functions—
  - (a) vested in it by this Chapter,
  - (b) assigned to it in terms of national legislation, and
  - (c) allocated to it in the national policing policy
- (5) In order to perform the functions set out in sub-section (3), a province—
  - (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community, and
  - (b) must make recommendations to the Cabinet member responsible for policing
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province
- (7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services
- (8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government
- (9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions

#### 207. Control of police service

- (1) The President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service
- (2) The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing
- (3) The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties
  - (1) The provincial commissioners are responsible for policing in their respective provinces—
  - (2) as prescribed by national legislation, and

(b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of sub-section (2).

(5) The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.

(6) If the provincial commissioner has lost the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that Commissioner, in accordance with national legislation.

#### **208. Police civilian secretariat**

A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing.

### **TITLE 3 INTELLIGENCE**

#### **209. Establishment and control of intelligence services**

(1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.

(2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of sub-section (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

#### **210. Powers, functions and monitoring**

National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for—

- (a) the co-ordination of all intelligence services; and
- (b) civilian monitoring of the activities of those services by an inspector appointed by the President as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members

### **CHAPTER 12 TRADITIONAL LEADERS**

#### **211. Recognition**

(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution

(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs

(3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law

#### **212. Role of traditional leaders**

(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law—

(a) national or provincial legislation may provide for the establishment of houses of traditional leaders, and

(b) national legislation may establish a council of traditional leaders

### **CHAPTER 13**

### **FINANCE**

#### **TITLE 1**

#### **GENERAL FINANCIAL MATTERS**

##### **213. National Revenue Fund**

(1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament

(2) Money may be withdrawn from the National Revenue Fund only—

(a) in terms of an appropriation by an Act of Parliament, or

(b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament

(3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund

##### **214. Equitable shares and allocations of revenue**

(1) An Act of Parliament must provide for—

(a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government,

(b) the determination of each province's equitable share of the provincial share of that revenue, and

(c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made

(2) The Act referred to in sub-section (1) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account—

- (a) the national interest,
- (b) any provision that must be made in respect of the national debt and other national obligations,
- (c) the needs and interests of the national government, determined by objective criteria,
- (d) the need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them,
- (e) the fiscal capacity and efficiency of the provinces and municipalities,
- (f) developmental and other needs of provinces, local government and municipalities,
- (g) economic disparities within and among the provinces,
- (h) obligations of the provinces and municipalities in terms of national legislation,
- (i) the desirability of stable and predictable allocations of revenue shares, and
- (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria

## **215. National, provincial and municipal budgets**

(1) National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector

(2) National legislation must prescribe—

- (a) the form of national, provincial and municipal budgets,
- (b) when national and provincial budgets must be tabled, and
- (c) that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation

(3) Budgets in each sphere of government must contain—

- (a) estimates of revenue and expenditure, differentiating between capital and current expenditure,
- (b) proposals for financing any anticipated deficit for the period to which they apply, and
- (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year

## **216. Treasury control**

(1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—

- (a) generally recognised accounting practice,
- (b) uniform expenditure classifications, and
- (c) uniform treasury norms and standards

(2) The national treasury, with the concurrence of the Cabinet member responsible for national financial matters, may stop the transfer of funds to an organ of State only for serious or persistent material breach of the measures established in terms of sub-section (1)

(3) A decision to stop the transfer of funds to a province may be taken only in terms of sub-section (2), and—

(a) may not stop the transfer of funds for more than 120 days, and

(b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 76(1) and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the national treasury

(4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of sub-section (3)

(5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province—

(a) the Auditor-General must report to Parliament, and

(b) the province must be given an opportunity to answer the allegations against it, and to State its case, before a committee

## 217. Procurement

(1) When an organ of State in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective

(2) Sub-section (1) does not prevent the organs of State or institutions referred to in that sub-section from implementing a procurement policy providing for—

(a) categories of preference in the allocation of contracts, and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination

(3) National legislation must prescribe a framework within which the policy referred to in sub-section (2) may be implemented

## 218 Government guarantees

(1) The national government, a provincial government or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation

(2) National legislation referred to in sub-section (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered

(3) Each year, every government must publish a report on the guarantees it has granted

### **219. Remuneration of persons holding public office**

(1) An Act of Parliament must establish a framework for determining—

(a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders, and

(b) the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of Municipal Councils of the different categories

(2) National legislation must establish an independent commission to make recommendations concerning the salaries, allowances and benefits referred to in sub-section (1)

(3) Parliament may pass the legislation referred to in sub-section (1) only after considering any recommendations of the commission established in terms of sub-section (2)

(4) The national executive, a provincial executive, a municipality or any other relevant authority may implement the national legislation referred to in sub-section (1) only after considering any recommendations of the commission established in terms of sub-section (2)

(5) National legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General, and members of any commission provided for in the Constitution, including the broadcasting authority referred to in section 192

## **TITLE 2**

### **FINANCIAL AND FISCAL COMMISSION**

#### **220. Establishment and functions**

(1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation

(2) The Commission is independent and subject only to the Constitution and the law, and must be impartial

(3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in section 214(2)

#### **221. Appointment and tenure of members**

(1) The Commission consists of the following women and men appointed by the President as head of the national executive

(a) A chairperson and a deputy chairperson who are full-time members,

(b) nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person,

(c) two persons nominated by organised local government in terms of section 163, and

(d) nine other persons

(2) Members of the Commission must have appropriate expertise

(3) Members serve for a term established in terms of national legislation

The President may remove a member from office on the ground of misconduct, incapacity or incompetence

## 222 Reports

The Commission must report regularly both to Parliament and to the provincial legislatures

## TITLE 3

### CENTRAL BANK

#### 223. Establishment

The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament

#### 224. Primary object

(1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic

(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters

#### 225. Powers and functions

The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act

## TITLE 4

### PROVINCIAL AND LOCAL FINANCIAL MATTERS

#### 226. Provincial Revenue Funds

(1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except money excluded by an Act of Parliament.

- (2) Money may be withdrawn from a Provincial Revenue Fund only—
  - (a) in terms of an appropriation by a provincial Act, or
  - (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in the Constitution or a provincial Act
- (3) Revenue allocated through a province to local government in that province in terms of section 214(1), is a direct charge against that province's Revenue Fund

## 227. National sources of provincial and local government funding

- (1) Local government and each province—
  - (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it, and
  - (b) may receive other allocations from national government revenue, either conditionally or unconditionally
- (2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base
- (3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 216
- (4) A province must provide for itself any resources that it requires, in terms of a provision of its provincial constitution, that are additional to its requirements envisaged in the Constitution

## 228. Provincial taxes

- (1) A provincial legislature may impose—
  - (a) taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties, and
  - (b) flat-rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax, rates on property or customs duties
- (2) The power of a provincial legislature to impose taxes, levies, duties and surcharges—
  - (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour, and
  - (b) must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered

**229. Municipal fiscal powers and functions**

(1) Subject to sub-sections (2), (3) and (4) a municipality may impose—

(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government in which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.

(2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties—

(a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic interests across municipal boundaries or the national mobility of goods, services, capital or labour; and

(b) may be regulated by national legislation.

(3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:

(a) The need to comply with sound principles of taxation;

(b) the powers and functions performed by each municipality;

(c) the fiscal capacity of each municipality;

(d) the effectiveness and efficiency of raising taxes, levies and duties; and

(e) equity.

(4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.

(5) National legislation envisaged in this section may be enacted without consulting local government and the Financial and Fiscal Commission may be consulted and any recommendations of the Commission have been followed.

**230. Provincial and municipal loans**

(1) A province or a municipality may take loans for capital or current expenditure in accordance with reasonable conditions determined by national legislation, but may not incur expenditure—

(a) that may be raised only when necessary for pending purposes during a financial year; and

(b) that may be repaid within twelve months.

(2) National legislation referred to in subsection (1) may be enacted without consulting local government and the Financial and Fiscal Commission may be consulted.

## CHAPTER 14 GENERAL PROVISIONS

### TITLE 1 INTERNATIONAL LAW

#### 231. International agreements

(1) The negotiating and signing of all international agreements is the responsibility of the national executive

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in sub-section (3)

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation, but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect

#### 232. Customary international law

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament

#### 233. Application of international law

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law

### TITLE 2 OTHER MATTERS

#### 234. Charters of Rights

In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution

#### 235. Self-determination

The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of

this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation

**236. Funding for political parties**

To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis

**237. Diligent performance of obligations**

All constitutional obligations must be performed diligently and without delay

**238. Agency and delegation**

An executive organ of State in any sphere of government may—

- (a) delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of State, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed, or
- (b) exercise any power or perform any function for any other executive organ of State on an agency or delegation basis

**239. Definitions**

In the Constitution, unless the context indicates otherwise, "national legislation" includes—

- (a) subordinate legislation made in terms of an Act of Parliament; and
- (b) legislation that was in force when the Constitution took effect and that is administered by the national government, "organ of State" means—

- (a) any department of State or administration in the national, provincial or local sphere of government, or

- (b) any other functionary or institution—

- (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution, or

- (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer, "provincial legislation" includes—

- (a) subordinate legislation made in terms of a provincial Act, and

- (b) legislation that was in force when the Constitution took effect and that is administered by a provincial government

**240 Inconsistencies between different texts**

In the event of an inconsistency between different texts of the Constitution the English text prevails

**241. Transitional arrangements**

Schedule 6 applies to the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition

**242. Repeal of laws**

The laws mentioned in Schedule 7 are repealed, subject to section 243 and Schedule 6

**243. Short title and commencement**

(1) This Act is called the Constitution of the Republic of South Africa, 1996, and comes into effect as soon as possible on a date set by the President by proclamation, which may not be a date later than 1 July 1997

(2) The President may set different dates before the date mentioned in sub-section (1) in respect of different provisions of the Constitution

(3) Unless the context otherwise indicates, a reference in a provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect

(4) If a different date is set for any particular provision of the Constitution in terms of sub-section (2), any corresponding provision of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), mentioned in the proclamation, is repealed with effect from the same date

(5) Sections 213, 214, 215, 216, 218, 226, 227, 228, 229 and 230 come into effect on 1 January 1998, but this does not preclude the enactment in terms of this Constitution of legislation envisaged in any of these provisions before that date. Until that date any corresponding and incidental provisions of the Constitution of the Republic of South Africa, 1993, remain in force

**SCHEDULE 1****NATIONAL FLAG**

(1) The national flag is rectangular, it is one and a half times longer than it is wide

(2) It is black, gold, green, white, chull red and blue

(3) It has a green Y-shaped band that is one fifth as wide as the flag. The centre lines of the band start in the top and bottom corners next to the flag post, converge in the centre of the flag, and continue horizontally to the middle of the free edge

(4) The green band is edged, above and below in white, and towards the flag post end, in gold. Each edging is one fifteenth as wide as the flag

(5) The triangle next to the flag post is black

(6) The upper horizontal band is chull red and the lower horizontal band is blue. These bands are each one third as wide as the flag

## SCHEDULE 2

### OATHS AND SOLEMN AFFIRMATIONS

#### 1. Oath or solemn affirmation of President and Acting President

The President or Acting President, before the President of the Constitutional Court, must swear/affirm as follows

"In the presence of everyone assembled here, and in full realisation of the high calling I assume as President/Acting President of the Republic of South Africa, I, A B, swear/solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic, and I solemnly and sincerely promise that I will always—

- promote all that will advance the Republic, and oppose all that may harm it,
- protect and promote the rights of all South Africans,
- discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience,
- do justice to all, and
- devote myself to the well-being of the Republic and all of its people " (In the case of an oath So help me God )

#### 2. Oath or solemn affirmation of Deputy President

The Deputy President, before the President of the Constitutional Court, must swear/affirm as follows

"In the presence of everyone assembled here, and in full realisation of the high calling I assume as Deputy President of the Republic of South Africa, I, A B, swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, observe, uphold and maintain the Constitution and all other law of the Republic, and I solemnly and sincerely promise that I will always—

- promote all that will advance the Republic, and oppose all that may harm it,
- be a true and faithful counsellor,
- discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience,
- do justice to all, and
- devote myself to the well-being of the Republic and all of its people " (In the case of an oath So help me God )

#### 3. Oath or solemn affirmation of Ministers and Deputy Ministers

Each Minister and Deputy Minister, before the President of the Constitutional Court or another judge designated by the President of the Constitutional Court, must swear/affirm as follows

"I, A B, swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other

law of the Republic, and I undertake to hold my office as Minister/Deputy Minister with honour and dignity, to be a true and faithful counsellor, not to divulge directly or indirectly any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability"

(In the case of an oath So help me God )

**4. Oath or solemn affirmation of members of the National Assembly, Permanent Delegates to the National Council of Provinces and members of the provincial legislatures**

(1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear or affirm as follows

"I, A B , swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I solemnly promise to perform my functions as a member of the National Assembly/ permanent delegate to the National Council of Provinces/member of the legislature of the province of C D to the best of my ability "

(In the case of an oath So help me God )

(2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of sub-item (1) before the presiding officer of the Assembly, Council or legislature, as the case may be

**5. Oath or solemn affirmation of Premiers, Acting Premiers and members of provincial Executive Councils**

The Premier or Acting Premier of a province, and each member of the Executive Council of a province, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear/affirm as follows

"I, A B , swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I undertake to hold my office as Premier/Acting Premier/member of the Executive Council of the province of C D with honour and dignity, to be a true and faithful counsellor, not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability."

(In the case of an oath So help me God )

**6 Oath or solemn affirmation of Judicial Officers**

(1) Each judge or acting judge, before the Chief Justice of the Supreme Court of Appeal or another judge designated by the Chief Justice, must swear or affirm as follows.

"I, A B , swear/solemnly affirm that, as a Judge of the Constitutional Court/Supreme Court of Appeal/High Court. F F Court I will be faithful to the

Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law "

(In the case of an oath So help me God )

(2) A person appointed to the office of Chief Justice of the Supreme Court of Appeal who is not already a judge at the time of that appointment must swear or affirm before the President of the Constitutional Court

(3) Judicial officers, and acting judicial officers, other than judges, must swear/affirm in terms of national legislation

### **SCHEDULE 3**

#### **ELECTION PROCEDURES**

##### **Part A.—Election Procedures for Constitutional Office-Bearers**

##### **1. Application**

The procedure set out in this Schedule applies whenever—

(a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly.

(b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson, or

(c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature

##### **2. Nominations**

The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting

##### **3. Formal requirements**

(1) A nomination must be made on the form prescribed by the rules mentioned in item 9

(2) The form on which a nomination is made must be signed—

(a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected,

(b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected, or

(c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation

##### **4. Announcement of names of candidates**

At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate

##### **5. Single candidate**

If only one candidate is nominated, the person presiding must declare that candidate elected

##### **6. Election procedure**

If more than one candidate is nominated—

(a) a vote must be taken at the meeting by secret ballot.

(b) each member present, or if it is a meeting of the National Council of Provinces, each province represented, at the meeting may cast one vote; and

(c) the person presiding must declare elected the candidate who receives a majority of the votes

#### 7. Elimination procedure

(1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes

(2) When applying sub-item (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated

#### 8. Further meetings

(1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding

(2) If a further meeting is held in terms of sub-item (1) the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

#### 9. Rules

(1) The President of the Constitutional Court must make rules prescribing—

(a) the procedure for meetings to which this Schedule applies

(b) the duties of any person presiding at a meeting and any person assisting the person presiding,

(c) the form on which nominations must be submitted; and

(d) the manner in which voting is to be conducted

(2) These rules must be made known in the way that the President of the Constitutional Court determines

#### Part B.—Formula to Determine Party Participation in Provincial Delegations to the National Council of Provinces

The number of delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.

2. If a calculation in terms of item 1 yields a surplus not absorbed by the delegates allocated to a party in terms of that item the surplus must compete with similar surpluses accruing to any other party or parties and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.

**SCHEDULE 4****FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND  
PROVINCIAL LEGISLATIVE COMPETENCE****Part A.—Administration of indigenous forests**

Agriculture

Airports other than international and national airports

Animal control and diseases

Casinos, racing, gambling and wagering, excluding lotteries and sports  
pools

Consumer protection

Cultural matters

Disaster management

Education at all levels, excluding tertiary education

Environment

Health services

Housing

Indigenous law and customary law subject to Chapter 12 of the  
Constitution

Industrial promotion

Language policy and the regulation of official languages to the extent  
that the provisions of section 6 of the Constitution expressly confer upon the  
provincial legislature legislative competenceMedia services directly controlled or provided by the provincial  
government, subject to section 192Nature conservation, excluding national parks, national botanical  
gardens and marine resourcesPolice to the extent that the provisions of Chapter 11 of the Constitution  
confer upon the provincial legislature legislative competence

Pollution control

Population development

Property transfer fees

Provincial public enterprises in respect of the functional areas in this  
Schedule and Schedule 5

Public transport

Public works only in respect of the needs of provincial government  
departments in the discharge of their responsibilities to administer functions  
specifically assigned to them in terms of the Constitution or any other law

Regional planning and development

Road traffic regulation

Soil conservation

Tourism

Trade

Traditional leadership subject to Chapter 12 of the Constitution

Urban and rural development:

Vehicle licensing

Welfare services

**Part B.—The following local government matters to the extent set out in section 155(6)(a) and (7):**

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours excluding the regulation of international and national shipping and matters related thereto

Stormwater management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

**SCHEDULE 5****FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL  
LEGISLATIVE COMPETENCE****Part A**

Abattoirs  
Ambulance services  
Archives other than national archives  
Libraries other than national libraries  
Liquor licences  
Museums other than national museums  
Provincial planning  
Provincial cultural matters  
Provincial recreation and amenities  
Provincial sport  
Provincial roads and traffic  
Veterinary services excluding regulation of the profession

**Part B**

The following local government matters to the extent set out for provinces in section 155(6)(a) and (7)

Beaches and amusement facilities  
Billboards and the display of advertisements in public places  
Cemeteries, funeral parlours and crematoria  
Cleansing  
Control of public nuisances  
Control of undertakings that sell liquor to the public  
Facilities for the accommodation, care and burial of animals  
Fencing and fences  
Licensing of dogs  
Licensing and control of undertakings that sell food to the public  
Local amenities  
Local sport facilities  
Markets  
Municipal abattoirs  
Municipal parks and recreation  
Municipal roads  
Noise pollution  
Pounds

**Public places**

**Refuse removal, refuse dumps and solid waste disposal**

**Street trading**

**Street lighting**

**Traffic and parking**

**SCHEDULE 6**  
**TRANSITIONAL ARRANGEMENTS**

**1. Definitions**

In this Schedule, unless inconsistent with the context—

“homeland” means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory,

“new Constitution” means the Constitution of the Republic of South Africa, 1996,

“old order legislation” means legislation enacted before the previous Constitution took effect,

“previous Constitution” means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)

**2. Continuation of existing law**

(1) All law that was in force when the new Constitution took effect, continues in force, subject to—

(a) any amendment or repeal, and

(b) consistency with the new Constitution

(2) Old order legislation that continues in force in terms of sub-item (1)—

(a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application, and

(b) continues to be administered by the authorities that administered it when the new Constitution took effect, subject to the new Constitution

**3. Interpretation of existing legislation**

(1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when the new Constitution took effect—

(a) to the Republic of South Africa or a homeland (except when it refers to a territorial area), must be construed as a reference to the Republic of South Africa under the new Constitution,

(b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution,

(c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to item 9 of this Schedule,

(d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces,

(e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to item 12 of this Schedule, or

(f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution

(2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation—

(a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or of a homeland, must be construed as a reference to—

(i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive, or

(ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive, or

(b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or of a homeland, must be construed as a reference to—

(i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive, or

(ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive

#### 4. National Assembly

(1) Anyone who was a member or office-bearer of the National Assembly when the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution

(2) The National Assembly as constituted in terms of sub-item (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999

(3) The National Assembly consists of 400 members for the duration of its term that expires on 30 April 1999, subject to section 49(4) of the new Constitution

(4) The rules and orders of the National Assembly in force when the new Constitution took effect, continue in force, subject to any amendment or repeal

**5. Unfinished business before Parliament**

(1) Any unfinished business before the National Assembly when the new Constitution takes effect must be proceeded with in terms of the new Constitution

(2) Any unfinished business before the Senate when the new Constitution takes effect must be referred to the National Council of Provinces, and the Council must proceed with that business in terms of the new Constitution

**6 Elections of National Assembly**

(1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 50(2) after a motion of no confidence in the President in terms of section 102(2) of the new Constitution

(2) Section 50(1) of the new Constitution is suspended until 30 April 1999

(3) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies—

(a) to the first election of the National Assembly under the new Constitution,

(b) to the loss of membership of the Assembly in circumstances other than those provided for in section 47(3) of the new Constitution, and

(c) to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution

(4) Section 47(4) of the new Constitution is suspended until the second election of the National Assembly under the new Constitution

**7. National Council of Provinces**

(1) For the period which ends immediately before the first sitting of a provincial legislature held after its first election under the new Constitution—

(a) the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution, and

(b) the allocation of permanent delegates and special delegates to the parties represented in the provincial legislature, is as follows

Province

Permanent Delegates

Special Delegates

1 Eastern Cape

ANC 5 NFI

ANC 1

**2. Free State**

ANC4 FF1 NP1

ANC4

**3 Gauteng**

ANC3 DP1 FF1 NP1

ANC3 NP1

**4 KwaZulu-Natal**

ANC1 DP1 IFP3 NP1

ANC2 IFP2

**5. Mpumalanga**

ANC4 FF1 NP1

ANC4

**6. Northern Cape**

ANC3 FF1 NP2

ANC2 NP2

**7 Northern Province**

ANC6

ANC4

**8 North West**

ANC4 FF1 NP1

ANC4

**9 Western Cape**

ANC2 DP1 NP3

ANC1 NP3

**(2) A party represented in a provincial legislature—**

(a) must nominate its permanent delegates from among the persons who were senators when the new Constitution took effect and are available to serve as permanent delegates, and

(b) may nominate other persons as permanent delegates only if none or an insufficient number of its former senators are available

(3) A provincial legislature must appoint its permanent delegates in accordance with the nominations of the parties

(4) Sub-items (2) and (3) apply only to the first appointment of permanent delegates to the National Council

(5) Section 62(1) of the new Constitution does not apply to the nomination and appointment of former senators as permanent delegates in terms of this item

(6) The rules and orders of the Senate in force when the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal

**8. Former senators**

(1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces is entitled to become a full voting member of the legislature of the province from which that person was nominated as a senator in terms of section 48 of the previous Constitution.

(2) If a former senator elects not to become a member of a provincial legislature that person is regarded as having resigned as a senator the day before the new Constitution took effect.

(3) The salary, allowances and benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

**9. National executive**

(1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister under the previous Constitution when the new Constitution took effect, continues in and holds that office in terms of the new Constitution, but subject to sub-item (2).

(2) Until 30 April 1999, sections 84, 89, 90, 91, 93 and 96 of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.

(3) Sub-item (2) does not prevent a Minister who was a senator when the new Constitution took effect, from continuing as a Minister referred to in section 91(1)(a) of the new Constitution, as that section reads in Annexure B.

**10. Provincial legislatures**

(1) Anyone who was a member or office-bearer of a province's legislature when the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.

(2) A provincial legislature as constituted in terms of sub-item (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.

(3) For the duration of its term that expires on 30 April 1999, and subject to section 108(4), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of item 8 of this Schedule.

(4) The rules and orders of a provincial legislature in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

**11. Elections of provincial legislatures**

(1) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies—

(a) to the first election of a provincial legislature under the new Constitution,

(b) to the loss of membership of a legislature in circumstances other than those provided for in section 106(3) of the new Constitution, and

(c) to the filling of vacancies in a legislature, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the legislature under the new Constitution

(2) Section 106(4) of the new Constitution is suspended in respect of a provincial legislature until the second election of the legislature under the new Constitution

## 12. Provincial executives

(1) Anyone who was the Premier or a member of the Executive Council of a province when the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to sub-item (2)

(2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever occurs first, sections 132 and 136 of the new Constitution must be regarded to read as set out in Annexure C to this Schedule

## 13. Provincial constitutions

A provincial constitution passed before the new Constitution took effect must comply with section 143 of the new Constitution

## 14. Assignment of legislation to provinces

(1) Legislation with regard to a matter within a functional area listed in Schedule 4 or 5 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Executive Council of the province

(2) To the extent that it is necessary for an assignment of legislation under sub-item (1) to be effectively carried out, the President, by proclamation, may—

(a) amend or adapt the legislation to regulate its interpretation or application,

(b) where the assignment does not apply to the whole of any piece of legislation, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those provisions to which the assignment applies or to the extent that the assignment applies to them, or

(c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial

executive or any department of State, administration, security service or other institution.

(3) (a) A copy of each proclamation issued in terms of sub-item (1) or (2) must be submitted to the National Assembly and the National Council of Provinces within 10 days of the publication of the proclamation

(b) If both the National Assembly and the National Council by resolution disapprove the proclamation or any provision of it, the proclamation or provision lapses, but without affecting—

(i) the validity of anything done in terms of the proclamation or provision before it lapsed, or

(ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.

(4) When legislation is assigned under sub-item (1) any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned

(5) Any assignment of legislation under section 235(8) of the previous Constitution including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is regarded as having been done under this item.

#### 15 Existing legislation outside Parliament's legislative power

(1) An authority within the national executive that administers any legislation falling outside Parliament's legislative power when the new Constitution takes effect, remains competent to administer that legislation until it is assigned to an authority within a provincial executive in terms of item 14 of this Schedule.

(2) Sub-item (1) lapses two years after the new Constitution took effect.

#### 16 Courts

(1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to—

(a) any amendment or repeal of that legislation; and

(b) consistency with the new Constitution

(2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution

(b) Anyone holding office as the President, the Deputy President or a judge of the Constitutional Court when the new Constitution takes effect, becomes the President, the Deputy President or a judge of the Constitutional Court under the new Constitution, and continues in office for the unexpired portion of their term as fixed by section 176(1) of the new Constitution

(3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution

(b) Anyone holding office as the Chief Justice, the Deputy Chief Justice or a judge of the Appellate Division when the new Constitution takes effect, becomes the Chief Justice, the Deputy Chief Justice or a judge of the Supreme Court of Appeal under the new Constitution

(4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in sub-item (6)

(b) Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) when the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in sub-item (6)

(5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to—

(a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution,

(b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal, and

(c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court

(6) (a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution

(b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a)

#### 17. Cases pending before courts

All proceedings which were pending before a court when the new Constitution took effect, must be disposed of as if the new Constitution had not been enacted, unless the interests of justice require otherwise

#### 18. Prosecuting authority

(1) Section 108 of the previous Constitution continues in force until the Act of Parliament envisaged in section 179 of the new Constitution takes effect. This sub-item does not affect the appointment of the National Director of Public Prosecutions in terms of section 179

(2) An attorney-general holding office when the new Constitution takes effect, continues to function in terms of the legislation applicable to that office, subject to sub-item (1)

**19. Oaths and affirmations**

A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the previous Constitution, is not obliged to repeat the oath of office or solemn affirmation under the new Constitution

**20. Other constitutional institutions**

(1) In this section "constitutional institution" means—

- (a) the Public Protector,
- (b) the Human Rights Commission,
- (c) the Commission on Gender Equality,
- (d) the Auditor-General,
- (e) the South African Reserve Bank,
- (f) the Financial and Fiscal Commission,
- (g) the Judicial Service Commission, or
- (h) the Pan South African Language Board

(2) A constitutional institution established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank or the Pan South African Language Board, the Public Protector or the Auditor-General when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to—

- (a) any amendment or repeal of that legislation, and
- (b) consistency with the new Constitution

(3) Sections 199(1), 200(1), (3) and (5) to (11) and 201 to 206 of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution

(4) The members of the Judicial Service Commission referred to in section 105(1)(h) of the previous Constitution cease to be members of the Commission when the members referred to in section 178(1)(i) of the new Constitution are appointed

(5) (a) The Volkstaat Council established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a member of the Council when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to—

- (i) any amendment or repeal of that legislation, and
- (ii) consistency with the new Constitution

(b) Sections 184A and 184B(1)(a), (b) and (d) of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution

**21. Enactment of legislation required by new Constitution**

(1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect.

(2) Section 198(b) of the new Constitution may not be enforced until the legislation envisaged in that section has been enacted

(3) Section 199(3)(a) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged in that section has been enacted

(4) National legislation envisaged in section 217(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect, but the absence of this legislation during this period does not prevent the implementation of the policy referred to in section 217(2).

(5) Until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces

(6) Until the legislation envisaged in section 229(1)(b) of the new Constitution is enacted, a municipality remains competent to impose any tax, levy or duty which it was authorised to impose when the Constitution took effect

**22. National unity and reconciliation**

Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity

**23. Bill of Rights**

(1) National legislation envisaged in sections 9(4), 32(2) and 33(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect

(2) Until the legislation envisaged in sections 32(2) and 33(3) of the new Constitution is enacted—

(a) section 32(1) must be regarded to read as follows

"(1) Every person has the right of access to all information held by the State or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights", and

(b) section 33(1) and (2) must be regarded to read as follows "Every person has the right to—

(a) lawful administrative action where any of their rights or interests is affected or threatened,

(b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened,

(c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public, and

(d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened."

(3) Sections 32(2) and 33(3) of the new Constitution lapse if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect

#### **24. Public administration and security services**

(1) Sections 82(4)(b), 215, 218(1), 219(1), 224 to 228, 236(1), (2), (3), (6), (7)(b) and (8), 237(1) and (2)(a) and 239 (4) and (5) of the previous Constitution continue in force as if the previous Constitution had not been repealed, subject to—

(a) the amendments to those sections as set out in Annexure D,

(b) any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the new Constitution, and

(c) consistency with the new Constitution

(2) The Public Service Commission and the provincial service commissions referred to in Chapter 13 of the previous Constitution continue to function in terms of that Chapter and the legislation applicable to it as if that Chapter had not been repealed, until the Commission and the provincial service commissions are abolished by an Act of Parliament passed in terms of section 75 of the new Constitution

(3) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3) of the previous Constitution, and any such proclamation continues in force, subject to—

(a) any amendment or repeal, and

(b) consistency with the new Constitution

#### **25 Additional disqualification for legislatures**

(1) Anyone who, when the new Constitution took effect, was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature

(2) The disqualification of a person in terms of sub-item (1)—

(a) lapses if the conviction is set aside on appeal or the sentence is reduced on appeal to a sentence that does not disqualify that person, and

(b) ends five years after the sentence has been completed

**26. Local Government**

(1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the new Constitution—

(a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force until 30 April 1999 or until repealed, whichever is sooner, and

(b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is *ex officio* entitled to be a member of that council until 30 April 1999 or until an Act of Parliament provides otherwise

(2) Section 245(4) of the previous Constitution continues in force until the application of that section lapses Section 16(5) and (6) of the Local Government Transition Act, 1993, may not be repealed before 30 April 1999

**27. Safekeeping of Acts of Parliament and Provincial Acts**

Sections 82 and 124 of the new Constitution do not affect the safekeeping of Acts of Parliament or provincial Acts passed before the new Constitution took effect

**28. Registration of immovable property owned by the State**

(1) On the production of a certificate by a competent authority that immovable property owned by the State is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government

(2) No duty, fee or other charge is payable in respect of a registration in terms of sub-item (1)

**ANNEXURE A****Amendments to Schedule 2 to the previous Constitution**

1 The replacement of item 1 with the following item

"1 Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation "

2 The replacement of item 2 with the following item

"2. The seats in the National Assembly as determined in terms of section 46 of the new Constitution, shall be filled as follows

(a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties

(b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted "

3 The replacement of item 3 with the following item

"3 The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine "

4 The amendment of item 5 by replacing the words preceding paragraph (a) with the following words

"5 The seats referred to in item 2(a) shall be allocated per region to the parties contesting an election, as follows "

5 The amendment of item 6—

(a) by replacing the words preceding paragraph (a) with the following words

"6 The seats referred to in item 2(b) shall be allocated to the parties contesting an election, as follows ", and

(b) by replacing paragraph (a) with the following paragraph

"(a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat "

6 The amendment of item 7(3) by replacing paragraph (b) with the following paragraph

"(b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a) ".

7 The replacement of item 10 with the following item

"10 The number of seats in each provincial legislature shall be as determined in terms of section 105 of the new Constitution "

8 The replacement of item 11 with the following item

"11 Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation "

9 The replacement of item 16 with the following item

*"Designation of representatives*

16 (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190 of the new Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature

(2) Following the designation in terms of sub-item (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists

(3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures "

10. The amendment of item 18 by replacing paragraph (b) with the following paragraph

"(b) a representative is appointed as a permanent delegate to the National Council of Provinces,"

11 The replacement of item 19 with the following item

"19 Lists of candidates of a party referred to in item 16(1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies. Provided that any such supplementation shall be made at the end of the list "

12 The replacement of item 23 with the following item

*"Vacancies*

23 (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person—

(a) whose name appears on the list of candidates from which the vacating member

was originally nominated, and

(b) who is the next qualified and available person on the list

(2) A nomination to fill a vacancy shall be submitted to the Speaker in writing

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item

23A(1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be "

13 The insertion of the following item after item 23

**"Additional ground for loss of membership of legislatures**

23A (1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.

(2) Despite sub-item (1) any existing political party may at any time change its name

(3) An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature

(4) An Act of Parliament referred to in sub-item (3) may also provide for—

(a) any existing party to merge with another party, or

(b) any party to subdivide into more than one party "

14 The deletion of item 24

15 The amendment of item 25—

(a) by replacing the definition of "Commission" with the following definition

" "Commission" means the Electoral Commission referred to in section 190 of the new Constitution,"; and

(b) by inserting the following definition after the definition of "national list"

" "new Constitution" means the Constitution of the Republic of South Africa, 1996,"

16 The deletion of item 26

#### **ANNEXURE B**

##### **Government of National Unity: National Sphere**

1 Section 84 of the new Constitution is deemed to contain the following additional sub-section

(3) The President must consult the Executive Deputy Presidents—

(a) in the development and execution of the policies of the national government

(b) in all matters relating to the management of the Cabinet and the performance of Cabinet business.

(c) in the assignment of functions to the Executive Deputy Presidents,

(d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives,

(e) before appointing commissions of inquiry,

(f) before calling a referendum, and

(g) before pardoning or relieving offenders "

2 Section 89 of the new Constitution is deemed to contain the following additional sub-section:

"(3) Sub-sections (1) and (2) apply also to an Executive Deputy President."

3 Paragraph (a) of section 90(1) of the new Constitution is deemed to read as follows

"(a) an Executive Deputy President designated by the President,"

4 Section 91 of the new Constitution is deemed to read as follows  
"Cabinet

91 (1) The Cabinet consists of the President, the Executive Deputy Presidents and—

(a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of sub-sections (8) to (12), and

(b) not more than one Minister who is not a member of the National Assembly and appointed in terms of sub-section (13), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties,

deems the appointment of such a Minister expedient

(2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly

(3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly

(4) On being designated, an Executive Deputy President may elect to remain or cease to be a member of the Assembly

(5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President

(6) An Executive Deputy President holds office—

(a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of sub-sections (2) and (3), or

(b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office

(7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President

(8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in sub-section (1)(a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties

(9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula

(a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in sub-section (1) (a) are to be appointed, plus one

(b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.

(c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).

(d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.

(e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus

(10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must—

(a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of sub-section (9).

(b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio,

(c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to sub-section (9),

(d) terminate any appointment under paragraph (b)—

(i) if the President is requested to do so by the leader of the party of which the Minister in question is a member, or

(u) if it becomes necessary for the purposes of the Constitution or in the interest of good government, or

(e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.

(11) Sub-section (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that sub-section seek to achieve consensus at all times. Provided that if consensus cannot be achieved on—

(a) the exercise of a power referred to in paragraph (a), (c) or (d)(i) of that sub-section, the President's decision prevails,

(b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that sub-section affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails, and

(c) the exercise of a power referred to in paragraph (b) or (e) of that sub-section affecting a person who is a member of the President's party, the President's decision prevails

(12) If any determination of portfolio allocations is varied under sub-section (10)(c), the affected Ministers must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.

(13) The President—

(a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must—

(i) determine a specific portfolio for a Minister referred to in sub-section (1) (b) should it become necessary pursuant to a decision of the President under that sub-section,

(u) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio,

(iii) fill, if necessary, a vacancy in respect of that portfolio, or

(b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government

(14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President. Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand

(15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government".

5 Section 93 of the new Constitution is deemed to read as follows

**"Appointment of Deputy Ministers**

93 (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts

(2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated

(3) The provisions of section 91 (10) to (12) apply, with the necessary changes, in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively

(4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister—

(a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister, and

(b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts

(5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific power or function "

6 Section 96 of the new Constitution is deemed to contain the following additional sub-sections

(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies

(i) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.

(5) If a Minister fails to administer the portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with that policy

(6) If the Minister concerned fails to comply with a requirement of the President under sub-section (5), the President may remove the Minister from office—

(a) if it is a Minister referred to in section 91(1)(a), after consultation with the Minister and, if the Minister is not a member of the President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party, or

(b) if it is a Minister referred to in section 91(1)(b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties ”.

### ANNEXURE C

#### Government of National Unity: Provincial Sphere

1. Section 132 of the new Constitution is deemed to read as follows

##### “Executive Councils

132 (1) The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.

(2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties.

(3) Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 91 (9), and in applying that formula a reference in that section to—

(a) the Cabinet, must be read as a reference to an Executive Council;

(b) a Minister, must be read as a reference to a member of an Executive Council; and

(c) the National Assembly, must be read as a reference to the provincial legislature

(4) The Premier of a province after consultation with the leaders of the participating parties must—

(a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of sub-section (3);

(b) appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;

(c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to sub-section (3);

(d) terminate any appointment under paragraph (b)—

(i) if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member or

(ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government. or

(e) fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council

(5) Sub-section (4) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that sub-section seek to achieve consensus at all times. Provided that if consensus cannot be achieved on—

(a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that sub-section, the Premier's decision prevails,

(b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that sub-section affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails, and

(c) the exercise of a power referred to in paragraph (b) or (c) of that sub-section affecting a person who is a member of the Premier's party, the Premier's decision prevails

(6) If any determination of portfolio allocations is varied under sub-section (4)(c), the affected members must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination

(7) Meetings of an Executive Council must be presided over by the Premier of the province

(8) An Executive Council must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government "

2 Section 136 of the new Constitution is deemed to contain the following additional sub-sections

"(3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies

(4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council

(5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy

(6) If the member concerned fails to comply with a requirement of the Premier under sub-section (5), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party "

#### ANNEXURE D

##### Public administration and security services

##### Amendments to sections of the previous Constitution

##### 1 The amendment of section 218 of the previous Constitution—

(a) by replacing in sub-section (1) the words preceding paragraph (a) with the following words "(1) Subject to the directions of the Minister of Safety and Security, the National Commissioner shall be responsible for —",

(b) by replacing paragraph (b) of sub-section (1) with the following paragraph "(b) the appointment of provincial commissioners",

(c) by replacing paragraph (d) of sub-section (1) with the following paragraph "(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills", and

(d) by replacing paragraph (k) of sub-section (1) with the following paragraph "(k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner,"

##### 2 The amendment of section 219 of the previous Constitution by replacing in sub-section (1) the words preceding paragraph (a) with the following words "(1) Subject to section 218(1), a Provincial Commissioner shall be responsible for—"

##### 3 The amendment of section 224 of the previous Constitution by replacing the proviso to sub-section (2) with the following proviso "Provided that this sub-section shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with

which it is associated and whose objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution".

4 The amendment of section 227 of the previous Constitution by replacing sub-section (2) with the following sub-section "(2) The National Defence Force shall exercise its powers and perform its functions solely in the national interest in terms of Chapter 11 of the Constitution of the Republic of South Africa, 1996"

5 The amendment of section 236 of the previous Constitution—

(a) by replacing sub-section (1) with the following sub-section "(1) A public service, department of State, administration or security service which immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as "the new Constitution"), performed governmental functions continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution";

(b) by replacing sub-section (6) with the following sub-section "(6) (a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in sub-section (2) or any class of such persons (b) The commission may reverse or alter a contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case" and (c) by replacing "this Constitution", wherever this occurs in section 236, with "the new Constitution"

6 The amendment of section 237 of the previous Constitution—

(a) by replacing paragraph (a) of sub-section (1) with the following paragraph "(a) The rationalisation of all institutions referred to in section 236(1), excluding military forces referred to in section 224(2), shall after the commencement of the Constitution of the Republic of South Africa 1996 continue, with a view to establishing—

(i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere, and

(ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government"; and

(b) by replacing subparagraph (i) of sub-section (2)(a) with the following subparagraph "(i) institutions referred to in section 236(1) excluding military forces, shall rest with the national government which shall exercise such responsibility in co-operation with the provincial governments"

7 The amendment of section 239 of the previous Constitution by replacing sub-section (4) with the following sub-section "(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in section 224(2) shall devolve upon the National Defence Force in accordance with the directions of the Minister of Defence "

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**33**

**CONSTITUTION  
OF  
REPUBLIC OF SOUTH KOREA**

{Adopted on 17 July 1948}

**PREAMBLE**

We, the people of Korea, proud of a resplendent history and traditions dating from time immemorial, upholding the cause of the Provisional Republic of Korea Government born of the Independence Movement of 1 March 1919 and the democratic ideals of the uprising on 19 April 1960 against injustice, having assumed the mission of democratic reform and peaceful unification of our homeland and having determined to consolidate national unity with justice, humanitarianism and brotherly love, and to destroy all social vices and injustice, and to afford equal opportunities to every person and provide for the fullest development of individual capabilities in all fields, including political, economic, social and cultural life by further strengthening the basic free and democratic order conducive to private initiative and public harmony, and to help each person discharge those duties and responsibilities concomitant to freedoms and rights, and to elevate the quality of life for all citizens and contribute to lasting world peace and the common prosperity of mankind and thereby to ensure security, liberty and happiness for ourselves and our posterity forever, do hereby amend, through national referendum following a resolution by the National Assembly, the Constitution ordained and established on 12 July 1948, and amended eight times subsequently

**CHAPTER I**  
**GENERAL PROVISIONS**

**1. Democracy**

- (1) The Republic of Korea is a democratic republic
- (2) The sovereignty of the Republic of Korea resides in the people, and all state authority emanates from the people

**2. Nationality**

- (1) Nationality in the Republic of Korea is prescribed by law
- (2) It is the duty of the State to protect citizens residing abroad as prescribed by law

**3. Territory**

The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands

**4. Unification, Peace**

The Republic of Korea seeks unification and formulates and carries out a policy of peaceful unification based on the principles of freedom and democracy

**5. War, Armed Forces**

- (1) The Republic of Korea endeavors to maintain international peace and renounces all aggressive wars
- (2) The Armed Forces are charged with the sacred mission of national security and the defense of the land and their political neutrality must be maintained

**6. Treaties, Foreigners**

- (1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rule of international law have the same effect as the domestic laws of the Republic of Korea
- (2) The status of foreigners is guaranteed as prescribed by international law and treaties

**7. Public Officials**

- (1) All public officials are servants of the entire people and responsible to the people
- (2) The status and political impartiality of public officials is guaranteed as prescribed by law

**8. Political Parties**

- (1) The establishment of political parties is free, and the plural party system is guaranteed
- (2) Political parties must be democratic in their objectives, organization, and activities, and have the necessary organizational arrangements for the people to participate in the formation of the political will

(3) Political parties enjoy the protection of the State and may be provided with operational funds by the State under the conditions as prescribed by law

(4) If the purposes or activities of a political party are contrary to the fundamental democratic order, the Government may bring action against it in the Constitutional Court for its dissolution, and, the political party is dissolved in accordance with the decision of the Constitutional Court

## 9. Culture

The State tries to sustain and develop the cultural heritage and to enhance national culture

## CHAPTER II

### RIGHTS AND DUTIES OF THE CITIZENS

#### 10. Dignity, Pursuit of Happiness

All citizens are assured of human worth and dignity and have the right to pursue happiness. It is the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals

#### 11 Equality

(1) All citizens are equal before the law, and there may be no discrimination in political, economic, social, or cultural life on account of sex, religion, or social status

(2) No privileged caste is recognized or ever established in any form

(3) The awarding of decorations or distinctions of honour in any form is effective only for recipients, and no privileges ensue therefrom

#### 12 Personal Liberty, Personal Integrity

(1) All citizens enjoy personal liberty. No person may be arrested, detained, searched, seized, or interrogated except as provided by law. No person may be punished, placed under preventive restrictions, or subject to involuntary labour except as provided by law and through lawful procedures

(2) No citizens may be tortured or be compelled to testify against himself in criminal cases

(3) Warrants issued by a judge through due procedures upon the request of a prosecutor have to be presented in case of arrest, detention, seizure, or search. Provided, that in a case where a criminal suspect is apprehended in flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an *ex post facto* warrant

(4) Any person who is arrested or detained has the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State assigns counsel for the defendant as prescribed by law

(5) No person may be arrested or detained without being informed of the reason therefore and of his right to assistance of counsel. The family and other related persons, as designated by law, of a person arrested or detained shall be notified without delay of the reason for and the time and place of the arrest or detention.

(6) Any person who is arrested or detained, has the right to request the court to review the legality of the arrest or detention.

(7) In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or similar action, or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession may not be admitted as evidence of guilt, nor may a defendant be punished by reason of such a confession.

### **13. Nulla poena sine lege, double jeopardy, retroactive law, family liability**

(1) No citizen may be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed, nor may he be placed in double jeopardy.

(2) No restrictions may be imposed upon the political rights of any citizen, nor may any person be deprived of property rights by means of retroactive legislation.

(3) No citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative.

### **14. Residence, Move**

All citizens enjoy the freedom of residence and the right to move at will.

### **15. Occupation**

All citizens enjoy freedom of occupation.

### **16. Home, Search, Seizure**

All citizens are free from intrusion into their place of residence. In case of search or seizure in a residence, a warrant issued by a Judge upon request of a prosecutor has to be presented.

### **17. Privacy**

The privacy of no citizen may be infringed.

### **18. Secrecy of Correspondence**

The secrecy of correspondence of no citizen may be infringed.

### **19. Conscience**

All citizens enjoy the freedom of conscience.

### **20. Religion, Church**

(1) All citizens enjoy the freedom of religion.

(2) No State religion may be recognized, and church and State are to be separated.

**21. Speech, Press, Assembly, Association, Honor, Public Morals**

(1) All citizens enjoy the freedom of speech and the press and of assembly and association

(2) Licensing or censorship of speech and the press, and licensing of assembly and association may not be recognized

(3) The standard of news service and broadcast facilities and matters necessary to ensure the functions of newspapers is determined by law

(4) Neither speech nor the press may violate the honour or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honour or rights of other persons, claims may be made for the damage resulting therefrom

**22. Learning, Intellectual Rights**

(1) All citizens enjoy the freedom of learning and the arts

(2) The rights of authors, inventors, scientists, engineers, and artists are protected by law

**23. Property, Public Welfare, Expropriation**

(1) The right to property of all citizens is guaranteed. Its contents and limitations are determined by law

(2) The exercise of property rights shall conform to the public welfare

(3) Expropriation, use, or restriction of private property from public necessity and compensation therefore are governed by law. However, in such a case, just compensation must be paid

**24. Right to Vote**

All citizens have the right to vote under the conditions prescribed by law

**25. Right to Public Office**

All citizens have the right to hold public office under the conditions prescribed by law

**26. Petition**

(1) All citizens have the right to petition in writing to any governmental agency under the conditions prescribed by law

(2) The State is obligated to examine all such petitions

**27. Right to Trial**

(1) All citizens have the right to be tried in conformity with the law by judges qualified under the Constitution and the law

(2) Citizens who are not on active military service or employees of the military forces may not be tried by a court martial within the territory of the Republic of Korea except in case of crimes as prescribed by law involving important classified military information, sentinels, sentry posts, the supply of harmful food and beverages, prisoners of war, and military articles and facilities and in the case of the proclamation of extraordinary martial law

(3) All citizens have the right to a speedy trial. The accused have the right to a public trial without delay in the absence of justifiable reasons to the contrary.

(4) The accused are presumed innocent until a judgment of guilt has been pronounced.

(5) A victim of a crime is entitled to make a statement during the proceedings of the trial of the case involved under the conditions prescribed by law.

## **28. False Imprisonment**

In a case where a criminal suspect or an accused person who has been placed under detention is not indicted as provided by law or is acquitted by a court, he is entitled to claim just compensation from the State under the conditions as prescribed by law.

## **29. State and Official's Liability**

(1) In case a person has sustained damages by an unlawful act committed by a public official in the course of official duties he may claim just compensation from the State or public organization under the conditions as prescribed by law. In this case, the public official concerned are not immune from liabilities.

(2) In case a person on active military service or an employee of the military forces, a police official, or others as prescribed by law sustains damages in connection with the performance of official duties such as combat action, drill, and so forth, he is not entitled to a claim against the State or public organization on the grounds of unlawful acts committed by public officials in the course of official duties but only to compensations as prescribed by law.

## **30. Victims**

Citizens who have suffered bodily injury or death due to criminal acts of others may receive aid from the State under the conditions as prescribed by law.

## **31. Education**

(1) All citizens have an equal right to receive an education corresponding to their abilities.

(2) All citizens who have children to support are responsible at least for their elementary education and other education as provided by law.

(3) Compulsory education is free of charge.

(4) Independence, professionalism, and political impartiality of education and the autonomy of institutions of higher learning are guaranteed under the conditions as prescribed by law.

(5) The State promotes lifelong education.

(6) Fundamental matters pertaining to the educational system including schools and lifelong education, administration, finance and the status of teachers are determined by law.

**32. Work**

(1) All citizens have the right to work. The State endeavors to promote the employment of workers and to guarantee optimum wages through social and economic means and enforces a minimum wage system under the conditions as prescribed by law.

(2) All citizens have the duty to work. The State prescribes by law the extent and conditions of the duty to work in conformity with democratic principles.

(3) Standards of working conditions are determined by law in such a way as to guarantee human dignity.

(4) Special protection has to be accorded to working women, and they may not be subjected to unjust discrimination in terms of employment, wages and working conditions.

(5) Special protection has to be accorded to working children.

(6) The opportunity to work shall be accorded preferentially, under the conditions as prescribed by law, to those who have given distinguished service to the State, wounded veterans and policemen, and members of the bereaved families of military servicemen and policemen killed in action.

**33. Unions**

(1) To enhance working conditions, workers have the right to independent association, collective bargaining, and collective action.

(2) Only those public officials who are designated by law, have the right to association, collective bargaining, and collective action.

(3) The right to collective action of workers employed by important defense industries may be either restricted or denied under the conditions as prescribed by law.

**34. Welfare**

(1) All citizens are entitled to a life worthy of human beings.

(2) The State has the duty to endeavor to promote social security and welfare.

(3) The State endeavors to promote the welfare and rights of women.

(4) The State has the duty to implement policies for enhancing the welfare of senior citizen and the young.

(5) Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age, or other reasons are protected by the State under the conditions as prescribed by law.

(6) The State endeavors to prevent disasters and to protect citizens from harm therefrom.

**35. Environment, Housing**

(1) All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.

(2) The substance of the environmental right is determined by law.

(3) The State endeavors to ensure comfortable housing for all citizens through housing development policies and the like

### **36. Marriage, Family, Mothers, Health**

(1) Marriage and family life are entered into and sustained on the basis of individual dignity and equality of the sexes, and the State must do everything in its power to achieve that goal

(2) The State endeavors to protect mothers

(3) The health of all citizens is protected by the State

### **37. Restriction, No Infringement of Essentials**

(1) Freedoms and rights of citizens may not be neglected on the grounds that they are not enumerated in the Constitution

(2) The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order, or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated

### **38. Duty to Pay Taxes**

All citizens have the duty to pay taxes under the conditions as prescribed by law

### **39. Duty to Military Service**

(1) All citizens have the duty of national defense under the conditions as prescribed by law

(2) No citizen may be treated unfavorably on account of the fulfillment of his obligation of military service

## **CHAPTER III**

### **THE NATIONAL ASSEMBLY**

### **40. Parliament**

The legislative power is vested in the National Assembly

### **41. Election**

(1) The National Assembly is composed of members elected by universal, equal, direct, and secret ballot by the citizens

(2) The number of members of the National Assembly is determined by law, but the number may not be less than 200

(3) The constituencies of members of the National Assembly, proportional representation, and other matters pertaining to National Assembly elections are determined by law

### **42. Term**

The term of office of members of the National Assembly is four years

### **43. Incompatibility**

Members of the National Assembly may not concurrently hold any other office prescribed by law

**44. Immunity**

(1) During the sessions of the National Assembly, no member of the National Assembly may be arrested or detained without the consent of the National Assembly except in case of flagrante delicto.

(2) In case of apprehension or detention of a member of the National Assembly prior to the opening of a session, such member must be released during the session upon the request of the National Assembly, except in case of flagrante delicto.

**45. Indemnity**

No member of the National Assembly can be held responsible outside the National Assembly for opinions officially expressed or votes cast in the Assembly

**46. Duties of Members**

(1) Members of the National Assembly have the duty to maintain high standards of integrity

(2) Members of the National Assembly must give preference to National interests and perform their duties in accordance with conscience

(3) Members of the National Assembly may not acquire, through abuse of their positions, rights, and interests in property or positions, or assist other persons to acquire the same, by means of contracts with or dispositions by the State, public organizations, or industries

**47. Sessions**

(1) A regular session of the National Assembly is convened once every year under the conditions prescribed by law, and extraordinary sessions of the National Assembly can be convened upon the request of the President or at least one-fourth of the members

(2) The period of regular sessions cannot exceed a hundred days, and that of extraordinary sessions, thirty days

(3) If the President requests the convening of an extraordinary session, the period of the session and the reasons for the request must be clearly specified

**48. Speakers**

The National Assembly elects one Speaker and two Vice-Speakers

**49. Quorum, Majority**

Except as otherwise provided in the Constitution or by law, the attendance of a majority of the total members, and the concurrent vote of a majority of the members present, are necessary for decisions of the National Assembly. In case of a tie vote, the matter is regarded as rejected

**50. Publicity**

(1) Sessions of the National Assembly are open to the public. Provided, that when it is decided so by a majority of the members present, when the

Speaker deems it necessary to do so for the sake of national security, they *may* be closed to the public

(2) The public disclosure of the proceedings of sessions which were *not* open to the public is determined by law

### 51. Pending Bills

Bills and other matters submitted to the National Assembly *for* deliberation cannot be abandoned on the ground that they were *not* acted upon during the session in which they were introduced, except in a case where the term of the members of the National Assembly has expired

### 52. Initiative

Bills may be introduced by members of the National Assembly or by the Executive

### 53. Passing Bills

(1) Each Bill passed by the National Assembly shall be sent to the Executive, and the President shall promulgate it within fifteen days

(2) In case of objection to the Bill, the President may, within the period referred to in paragraph (1), return it to the National Assembly with written explanation of his objection, and request it be reconsidered. The President may do the same during adjournment of the National Assembly

(3) The President may not request the National Assembly to reconsider the Bill in part, or with proposed amendments

(4) In case there is a request for reconsideration of a Bill, the National Assembly reconsiders it, and if the National Assembly repasses the Bill in the original form with the attendance of more than one half of the total members and with a concurrent vote of two-thirds or more of the members present, it becomes law

(5) If the President does not promulgate the bill, or does not request the National Assembly to reconsider it within the period referred to in paragraph (1) it becomes law

(6) The President promulgates without delay the law as finalized under paragraphs (4) and (5). If the President does not promulgate a law within five days after it has become law under paragraph (5), or after it has been returned to the Executive under paragraph (4), the Speaker promulgates it

(7) Except as provided otherwise, a law takes effect twenty days after the date of promulgation

### 54. Budget

(1) The National Assembly deliberates and decides upon the national Budget Bill

(2) The Executive formulates the Budget Bill for each fiscal year and submits it to the National Assembly within ninety days before the beginning of a fiscal year. The National Assembly decides upon it within thirty days before the beginning of the fiscal year

(3) If the Budget Bill is not passed by the beginning of the fiscal year, the Executive may, in conformity with the budget of the previous fiscal year, disburse funds for the following purposes until the Budget Bill is passed by the National Assembly

- 1) The maintenance and operation of agencies and facilities established by the Constitution or law,
- 2) Execution of the obligatory expenditures as prescribed by law, and
- 3) Continuation of projects previously approved in the budget

#### 55. Reserve Fund

(1) In a case where it is necessary to make continuing disbursements for a period longer than one fiscal year, the Executive obtains the approval of the National Assembly for a specified period of time.

(2) A reserve fund is to be approved by the National Assembly in total. The disbursement of the reserve fund shall be approved during the next session of the National Assembly.

#### 56. Budget Amendment

When it is necessary to amend the budget, the Executive may formulate a supplementary revised Budget Bill and submit it to the National Assembly.

#### 57. Changes of Budget Bill

The National Assembly shall, without the consent of the Executive, neither increase the sum of any item of expenditure nor create any new items of expenditure in the budget submitted by the Executive.

#### 58. Issuing National Bonds

When the Executive plans to issue national bonds or to conclude contracts which may incur financial obligations on the State outside the budget, it needs the prior concurrence of the National Assembly.

#### 59. Taxes

Types and rates of taxes are determined by law.

#### 60. Consent to Treaties

(1) The National Assembly has the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security.

- treaties concerning important international organizations,
- treaties of friendship, trade and navigation,
- treaties pertaining to any restriction in sovereignty,
- peace treaties,
- treaties which will burden the State or people with an important financial obligation, and
- treaties related to legislative matters.

(2) The National Assembly also has the right to consent to the declaration of war, the dispatch of armed forces to foreign states, and the stationing of alien forces in the territory of the Republic of Korea.

**61. Investigations**

(1) The National Assembly may inspect affairs of State or investigate specific matters of State affairs, and may demand the production of documents directly related thereto, the appearance of a witness in person, and the furnishing of testimony or statements of opinion.

(2) The procedures and other necessary matters concerning the inspection and investigation of State administration are determined by law.

**62. Government in Parliament**

(1) The Prime Minister, members of the State Council, or Government delegates may attend meetings of the National Assembly or its committees and report on the State administration or deliver opinions and answer questions.

(2) When requested by the National Assembly or its committees the Prime Minister, members of the State Council, or Government delegates have to attend any meeting of the National Assembly and answer questions. If the Prime Minister or State Council members are requested to attend the Prime Minister or State Council members may have State Council members or Government delegates attend any meeting of the National Assembly and answer questions.

**63. Recommendation for Removal**

(1) The National Assembly may pass a recommendation for the removal of the Prime Minister or a State Council member from office.

(2) A recommendation for removal as referred to in paragraph (1) may be introduced by one-third or more of the total members of the National Assembly, and passed with the concurrent vote of a majority of the total members of the National Assembly.

**64. Proceedings, Disciplinary Actions**

(1) The National Assembly may establish the rules of its proceedings and internal regulations, provided that they are not in conflict with law.

(2) The National Assembly may review the qualifications of its members and may take disciplinary actions against its members.

(3) The concurrent vote of two-thirds or more of the total members of the National Assembly are required for the expulsion of any member.

(4) No action may be brought to court with regard to decisions taken under paragraphs (2) and (3).

**65. Impeachment**

(1) In case the President, the Prime Minister, members of the State Council, heads of Executive Ministries, Judges of the Constitutional Court, Judges, members of the Central Election Management Committee, members of the Board of Audit and Inspection, and other public officials designated by law have violated the Constitution or other laws in the performance of official duties, the National Assembly may pass motions for their impeachment.

(2) A motion for impeachment prescribed in paragraph (1) may be proposed by one-third or more of the total members of the National Assembly, and requires a concurrent vote of a majority of the total members of the National Assembly for passage. Provided, that a motion for the impeachment of the President shall be proposed by a majority of the total members of the National Assembly and approved by two-thirds or more of the total members of the National Assembly

(3) Any person against whom a motion for impeachment has been passed is suspended from exercising his power until the impeachment has been adjudicated

(4) A decision on impeachment does not extend further than removal from public office. However, it does not exempt the person impeached from civil or criminal liability.

## CHAPTER IV THE EXECUTIVE

### Section 1—The President

#### 66. Head of State

(1) The President is the Head of State and represents the State vis-à-vis foreign states

(2) The President has the responsibility and duty to safeguard the independence, territorial integrity, and continuity of the State and the Constitution

(3) The President has the duty to pursue sincerely the peaceful unification of the homeland

(4) Executive power is vested in the Executive Branch headed by the President

#### 67. Election

(1) The President is elected by universal, equal, direct, and secret ballot by the people

(2) In case two or more persons receive the same largest number of votes in the election as referred to in paragraph (1), the person who receives the largest number of votes in an open session of the National Assembly attended by a majority of the total members of the National Assembly is elected

(3) If and when there is only one presidential candidate, he shall not be elected President unless he receives at least one-third of the total eligible votes

(4) Citizens who are eligible for election to the National Assembly, and who have reached the age of forty years or more on the date of the presidential election are eligible to be elected to the presidency.

(5) Matters pertaining to presidential elections are determined by law

**68. Succession**

(1) The successor to the incumbent President is elected seventy to forty days before his term expires

(2) In case a vacancy occurs in the office of the President or the President-elect dies, or is disqualified by a court ruling or for any other reason, a successor is to be elected within sixty days

**69. Oath**

The President, at the time of his inauguration, takes the following oath.

"I do solemnly swear before the people that I will faithfully execute the duties of the President by observing the Constitution, defending the State, pursuing the peaceful unification of the homeland, promoting the freedom and welfare of the people, and endeavoring to develop national culture "

**70. Term**

The term of office of the President is five years, and the President cannot be re-elected

**71. Vacancy**

If the office of the presidency is vacant or the President is unable to perform his duties for any reason, the Prime Minister or the members of the State Council in the order of priority as determined by law act for him

**72. Referendum on Policy**

The President may submit important policies relating to diplomacy, national defense, unification, and other matters relating to the national destiny to a national referendum if he deems it necessary

**73. Treaties, Foreign Affairs**

The President concludes and ratifies treaties, accredits, receives, or dispatches diplomatic envoys, and declares war and concludes peace

**74. Armed Forces**

(1) The President is Commander-in-Chief of the Armed Forces under the conditions as prescribed by the Constitution and law

(2) The organization and formation of the Armed Forces is determined by law

**75. Decrees**

The President may issue presidential decrees concerning matters delegated to him by law with the scope specifically defined and also matters necessary to enforce laws

**76. Emergency Powers**

(1) In time of internal turmoil, external menace, natural calamity, or a grave financial or economic crisis, the President may take in respect to them the minimum necessary financial and economic actions or issue orders having

the effect of law, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly

(2) In case of major hostilities affecting national security, the President may issue orders having the effect of law, only when it is required to preserve the integrity of the nation, and it is impossible to convene the National Assembly

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## Section 2—The Executive Branch

### *Sub-section 1 The Prime Minister and Members of the State Council*

#### 86. Prime Minister

(1) The Prime Minister is appointed by the President with the consent of the National Assembly

(2) The Prime Minister assists the President and directs the Executive Ministries from active duty.

(3) No Member of the Military can be appointed Prime Minister unless he is retired from active duty

#### 87. Members of State Council

(1) The members of the State Council are appointed by the President on the recommendation of the Prime Minister

(2) The Members of the State Council assist the President until the removal of a member of the State Council from office

(3) The Prime Minister may recommend to the President the removal of a member of the State Council from office

(4) No member of the military can be appointed a member of the State Council unless he is retired from active duty

### *Sub-section 2 The State Council*

#### 88. State Council

(1) The State Council deliberates on important policies that fall within the power of the Executive

(2) The State Council is composed of the President, the Prime Minister, and other members numbering no more than thirty and no less than fifteen

(3) The President is the chairman of the State Council, and the Prime Minister is the Vice-Chairman

### 89. Competencies

The following matters are referred to the State Council for deliberation

- 1) Basic plans for State affairs, and general policies of the Executive,
- 2) Declaration of war, conclusion of peace, and other important matters pertaining to foreign Policy,
- 3) Draft amendments to the Constitution, proposals for national referendums, proposed treaties, legislative Bills, and proposed presidential decrees,
- 4) Budgets, settlement of accounts, basic plans for disposal of State properties, contracts incurring financial obligation on the State, and other important financial matters,
- 5) Emergency orders and emergency financial and economic actions or orders by the President, and declaration and termination of martial law,
- 6) Important military affairs,
- 7) Requests for convening an extraordinary session of the National Assembly,
- 8) Awarding of honours,
- 9) Granting of amnesty, commutation, and restoration of rights,
- 10) Demarcation of jurisdiction between Executive Ministries,
- 11) Basic plans concerning delegation or allocation of powers within the Executive,
- 12) Evaluation and analysis of the administration of State affairs,
- 13) Formulation and coordination of important policies of each Executive Ministry,
- 14) Action for the dissolution of a political party,
- 15) Examination of petitions pertaining to executive policies submitted or referred to the Executive,
- 16) Appointment of the Prosecutor General, the Chairman of the Joint Chiefs of Staff, the Chief of Staff of each armed service, the Presidents of national universities, Ambassadors, and such other public officials and managers of important State-run enterprises as designated by law, and
- 17) Other matters presented by the President, the Prime Minister, or a member of the State Council

### 90. Advisory Council of Elder Statesmen

(1) An Advisory Council of Elder Statesmen, composed of elder statesmen, may be established to advise the President on important affairs of State

(2) The immediate former President becomes the Chairman of the Advisory Council of Elder Statesmen. Provided, that if there is no immediate former President, the President appoints the Chairman.

(3) The Organization, function, and other necessary matters pertaining to the Advisory Council of Elder Statesmen are determined by law.

#### **91. National Security Council**

(1) A National Security Council is established to advise the President on the formulation of foreign, military, and domestic policies related to national security prior to their deliberation by the State Council.

(2) The meetings of the National Security Council are presided over by the President.

(3) The organization, function, and other necessary matters pertaining to the National Security Council are determined by law.

#### **92. Advisory Council on Democracy and Peaceful Unification**

(1) An Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy.

(2) The organization, function, and other necessary matters pertaining to the Advisory Council on Democratic and Peaceful Unification are determined by law.

#### **93. National Economic Advisory Council**

(1) A National Economic Advisory Council may be established to advise the President on the formulation of important policies for developing the national economy.

(2) The organization, function, and other necessary matters pertaining to the National Economic Advisory Council are determined by law.

### ***Sub-section 3 The Executive Ministries***

#### **94. Heads of Ministries**

The Heads of Executive Ministries are appointed by the President from among members of the State Council on the recommendation of the Prime Minister.

#### **95. Ordinances**

The Prime Minister or the head of each Executive Ministry may, under the powers delegated by law or Presidential Decree, or ex officio, issue ordinances of the Prime Minister or the Executive Ministry concerning matters that are within their jurisdiction.

#### **96. Ministry Organization**

The establishment, organization, and function of each Executive Ministry are determined by law.

*Sub-section 4 The Board of Audit and Inspection***97. Board of Audit and Inspection**

The Board of Audit and Inspection is established under the direct jurisdiction of the President to inspect and examine the settlement of the revenues and expenditures of the State, the accounts of the State, and other organizations specified by law and the job performances of the executive agencies and public officials

**98. Membership, Term**

(1) The Board of Audit and Inspection is composed of no less than five and no more than eleven members, including the Chairman

(2) The Chairman of the Board is appointed by the President with the consent of the National Assembly. The term of office of the Chairman is four years, and he may be reappointed only once

(3) The members of the Board are appointed by the President on the recommendation of the Chairman. The term of office of the members is four years, and they may be reappointed only once

**99. Inspection, Report**

The Board of Audit and Inspection inspects the closing of accounts of revenues and expenditures each year, and reports the results to the President and the National Assembly in the following year

**100. Organization**

The organization and function of the Board of Audit and Inspection, the qualifications of its members, the range of the public official's subject to inspection, and other necessary matters are determined by law.

## CHAPTER V THE COURTS

**101. Courts**

(1) Judicial power is vested in courts composed of Judges

(2) The courts comprise the Supreme Court, which is the highest court of the State, and courts at specified levels

(3) Qualifications for Judges are determined by law.

**102. Court Organization**

(1) Departments may be established in the Supreme Court

(2) There are Supreme Court Justices at the Supreme Court. Provided, that Judges other than Supreme Court Justices may be assigned to the Supreme Court under the conditions as prescribed by law.

(3) The organization of the Supreme Court and lower courts is determined by law.

**103. Independence of Judges**

Judges rule independently according to their conscience and in conformity with the Constitution and the law

**104. Appointment of Judges**

(1) The Chief Justice of the Supreme Court is appointed by the President with the consent of the National Assembly

(2) The Supreme Court Justices are appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly

(3) Judges other than the Chief Justice and the Supreme Court Justices are appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices

**105. Term of Judges**

(1) The term of office of the Chief Justice is six years and he cannot be reappointed

(2) The term of office of the Justices of the Supreme Court is six years and they may be reappointed as prescribed by law

(3) The term of office of Judges other than the Chief Justice and Justices of the Supreme Court is ten years, and they may be reappointed under the conditions as prescribed by law

(4) The retirement age of Judges is determined by law.

**106. Sanctions, Early Retirement**

(1) No Judge may be removed from office except by impeachment or a sentence of imprisonment or heavier punishment, nor may he be suspended from office, have his salary reduced, or suffer any other unfavorable treatment except by disciplinary action

(2) In the event a Judge is unable to discharge his official duties because of serious mental or physical impairment, he may be retired from office under the conditions as prescribed by law

**107. Constitutional Review**

(1) When the constitutionality of a law is at issue in trial, the court requests a decision of the Constitutional Court, and Judges according to the decision thereof

(2) The Supreme Court has the power to make a final review of the constitutionality or legality of administrative decrees, regulations or actions, when their constitutionality or legality is at issue in a trial

(3) Administrative appeals may be conducted as a procedure prior to a judicial trial. The procedure of administrative appeals are determined by law and are in conformity with the principles of judicial procedures

**108. Court Administration**

The Supreme Court may establish, within the scope of law, regulations, pertaining to judicial proceedings and internal discipline and regulations on administrative matters of the court

**109. Publicity**

Trials and decisions of the courts are open to the public: Provided that when there is a danger that such trials may undermine the national security or disturb public safety and order, or be harmful to public morals, trials may be closed to the public by court decision.

**110. Court-Martial**

(1) Courts-Martial may be established as special courts to exercise jurisdiction over military trials.

(2) The Supreme Court has the final appellate jurisdiction over Courts-Martial.

(3) The organization and authority of Courts-Martial and the qualifications of their Judges are determined by law.

(4) Military trials under an extraordinary martial law may not be appealed in case of crimes of soldiers and employees of the military: military espionage and crimes as defined by law in regard to sentinels, sentry posts, supply of harmful foods and beverages and prisoners of war, except in the case of a death sentence.

**CHAPTER VI****THE CONSTITUTIONAL COURT****111. Competence. Appointment**

(1) The Constitutional Court is competent to adjudicate the following matters:

- 1) The unconstitutionality of law upon the request of the courts
- 2) Impeachment:
- 3) Dissolution of a political party;
- 4) Disputes about the jurisdictions between State agencies between State agencies and local governments, and between local governments and
- 5) Petitions relating to the Constitution as prescribed by law.

(2) The Constitutional Court is composed of nine Adjudicators qualified to be court judges, and they are appointed by the President.

(3) Among the Adjudicators referred to in paragraph (2), three are appointed from persons selected by the National Assembly, and three appointed from persons nominated by the Chief Justice.

(4) The head of the Constitutional Court is appointed by the President from among the Adjudicators with the consent of the National Assembly

**112. Term. Incompatibility**

(1) The term of office of the Adjudicators of the Constitutional Court is six years, and they may be reappointed under the conditions as prescribed by law.

(2) The Adjudicators of the Constitutional Court may not join any political party nor participate in political activities

(3) No Adjudicator of the Constitutional Court can be expelled from office except by impeachment or a sentence of imprisonment or heavier punishment

#### 113. Majority, Internal Regulations

(1) When the Constitutional Court makes a decision on the unconstitutionality of a law, impeachment, dissolution of a political party, or a petition relating to the Constitution, the concurrence of at least six Adjudicators is required

(2) The Constitutional Court may establish regulations relating to its proceedings and internal discipline and regulations on administrative matters within the limits of law

(3) The organization, function, and other necessary matters of the Constitutional Court are determined by law

### CHAPTER VII ELECTION MANAGEMENT

#### 114. Establishment

(1) Election Management Committees are established for the purpose of fair management of elections and national referenda, and dealing with administrative affairs concerning political parties

(2) The Central Election Management Committee is composed of three members appointed by the President, three members selected by the National Assembly, and three members designated by the Chief Justice of the Supreme Court. The Chairman of the Committee is elected from among the members

(3) The term of office of the members of the Committee is six years

(4) The members of the Committee may not join political parties, nor participate in political activities

(5) No member of the Committee can be expelled from office except by impeachment or a sentence of imprisonment or heavier punishment

(6) The Central Election Management Committee may establish, within the limit of laws and decrees, regulations relating to the management of elections, national referenda, and administrative matters concerning political parties and may also establish regulations relating to internal discipline that are compatible with law

(7) The organization, function, and other necessary matters of the Election Management Committees at each level are determined by law

#### 115. Instructions

(1) Election Management Committees at each level may issue necessary instructions to administrative agencies concerned with respect to administrative matters pertaining to elections and national referenda such as the preparation of the pollbooks

(2) Administrative agencies concerned, upon receipt of such instructions, have to comply

#### **116. Campaigns**

(1) Election campaigns are conducted under the management of the Election Management Committees at each level within the limit set by law. Equal opportunity has to be guaranteed

(2) Except as otherwise prescribed by law, expenditures for elections are not imposed on political parties or candidates

### **CHAPTER VIII LOCAL AUTONOMY**

#### **117. Local Governments**

(1) Local Governments deal with administrative matters pertaining to the welfare of local residents, manage properties, and may enact provisions relating to local autonomy, within the limit of laws and regulations

(2) The types of local Governments are determined by law

#### **118. Local Councils**

(1) A local Government has a council

(2) The organization and powers of local Councils, and the election of members, election procedures for heads of local Governments, and other matters pertaining to the organization and operation of local Governments are determined by law

### **CHAPTER IX THE ECONOMY**

#### **119. Regulation and Coordination**

(1) The economic order of the Republic of Korea is based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs

(2) The State may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power, and to democratize the economy through harmony among the economic agents

#### **120. Natural Resources**

(1) Licenses to exploit, develop, or utilize minerals and all other important underground resources, marine resources, water power, and natural powers available for economic use may be granted for a period of time under the conditions as prescribed by law

(2) The land and natural resources are protected by the State, and the State establishes a plan necessary for their balanced development and utilization

#### 121. Agriculture

(1) The State endeavors to realize the land-to-the-tillers principle with respect to agricultural land. Tenant farming is prohibited.

(2) The leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and to ensure the rational utilization of agricultural land or due to unavoidable circumstances, is recognized under the conditions as prescribed by law.

#### 122. Land Laws

The State may impose, as under the conditions prescribed by law, restrictions or obligations necessary for the efficient and balanced utilization, development, and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.

#### 123. Farming and Fishing

(1) The State establishes and implements a plan to comprehensively develop and support the farm and fishing communities in order to protect and foster agriculture and fisheries.

(2) The State has the duty to foster regional economies to ensure the balanced development of all regions.

(3) In order to protect the interests of farmers and fishermen, the State endeavors to stabilize the prices of agricultural and fishery products by maintaining an equilibrium between the demand and supply of such products and improving their marketing and distribution systems.

(4) The State fosters organizations founded on the spirit of self-help among farmers, fishermen, and businessmen engaged in small and medium industry and guarantees their independent activities and development.

#### 124. Consumer Protection

The State guarantees a consumer protection movement intended to encourage sound consumption activities and improvement in the quality of products under the conditions as prescribed by law.

#### 125. Foreign Trade

The State fosters foreign trade and may regulate and coordinate it.

#### 126. No Socialization

Private enterprises may not be nationalized nor transferred to ownership by a local Government nor shall their management be controlled or administered by the State, except in cases as prescribed by law to meet urgent necessities of national defense or the national economy.

**127. Innovation, Standardization**

(1) The State strives to improve the national economy by developing science and technology, information and human resources, and encouraging innovation

(2) The State establishes a system of national standards

(3) The President may establish advisory organizations necessary to achieve the purpose referred to in paragraph (1)

**CHAPTER X****AMENDMENTS TO THE CONSTITUTION****128. Initiative**

(1) A proposal to amend the Constitution can be introduced either by a majority of the total members of the National Assembly or by the President

(2) Amendments to the Constitution for the extension of the term of office of the President or for a change allowing for the re-election of the President are not effective for the President in office at the time of the proposal for such amendments to the Constitution

**129. Publication**

Proposed amendments to the Constitution are presented to the public by the President for twenty days or more

**130. Majority, Referendum**

(1) The National Assembly decides upon the proposed amendments within sixty days of the public announcement, and passage by the National Assembly requires the concurrent vote of two-thirds or more of the total members of the National Assembly

(2) The proposed amendments to the Constitution are submitted to a national referendum not later than thirty days after passage by the National Assembly, and are confirmed by more than one half of all votes cast by more than one half of voters eligible to vote in elections for members of the National Assembly

(3) When the proposed amendments to the Constitution receive the concurrence prescribed in paragraph (2), the amendments to the Constitution is finalized, and the President promulgates it without delay

**CHAPTER XI****ENFORCEMENT PROVISIONS****1. Enforcement**

This Constitution enters into force on 25 Feb 1988. Provided, that the enactment or amendment of laws necessary to implement this Constitution, the elections of the President and the National Assembly under this Constitution, and other preparations to implement this constitution may be carried out prior to the entry into force of this constitution

## 2. First Presidential Election

(1) The first presidential election under this Constitution is held not later than forty days before this Constitution enters into force

(2) The term of office of the First President under this Constitution commences on the date of its enforcement

## 3. First Parliamentary Elections

(1) The first elections of the National Assembly under this Constitution are held within six months from the promulgation of this Constitution. The term of office of the members of the first National Assembly elected under this Constitution commences on the date of the first convening of the national Assembly under Constitution

(2) The term of office of the members of the National Assembly incumbent at the time this Constitution is promulgated terminates the day prior to the first convening of the National Assembly under paragraph (1)

## 4. Public Officials

(1) Public officials and officers of enterprises appointed by the Government, who are in office at the time of the enforcement of this Constitution, are considered as having been appointed under this Constitution. Provided, that public officials whose election procedures or appointing authorities are changed under this Constitution, the Chief Justice of the Supreme Court, and the Chairman of the Board of Audit and Inspection remain in office until such time as their successors are chosen under this constitution, and their terms of office terminate the day before the installation of their successors

(2) Judges attached to the Supreme Court who are not the Chief Justice or Justices of the Supreme Court and who are in office at the time of the enforcement of this Constitution are considered as having been appointed under this Constitution notwithstanding the provision of paragraph (1)

(3) Those provisions of this Constitution which prescribe the terms of office of public officials or which restrict the number of terms that public officials may serve take effect upon the dates of the first elections or the first appointments of such public officials under this Constitution

## 5. Old Law

Laws, decrees, Ordinances and treaties in force at the time this Constitution enters into force, remain valid unless they are contrary to this Constitution

## 6. Old Organizations

Those organizations existing at the time of the enforcement of this Constitution which have been performing the functions falling within the authority of new organizations to be created under this Constitution continue to exist and perform such functions until such time as the new organizations are created under this Constitution

# 34

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## CONSTITUTION OF SPAIN

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### **PREAMBLE**

The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the well-being of all its members, in the exercise of its sovereignty proclaims its will to guarantee democratic coexistence within the Constitution and the laws in accordance with a just economic and social order, consolidate a state of law which insures the rule of law as the expression of the popular will, protect all Spaniards and peoples of Spain in the exercise of human rights, their cultures and traditions, languages, and institutions, promote the progress of culture and the economy to insure a dignified quality of life for all, establish an advanced democratic society, and collaborate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth

Therefore, the Parliament approves, and the Spanish people ratify the following Constitution

### **TITLE 0**

#### **PRELIMINARY TITLE**

##### **1. State Principles, Sovereignty, Form**

(1) Spain constitutes itself into a social and democratic state of law which advocates liberty, justice, equality, and political pluralism as the superior values of its legal order

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Note —Consolidated up to the amendment of 27 August, 1992

(2) National sovereignty belongs to the Spanish people from whom emanate the powers of the State

(3) The political form of the Spanish State is the parliamentary Monarchy

## **2. National Unity, Regional Autonomy**

The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions which make it up and the solidarity among all of them

## **3. Official Language**

(1) Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it

(2) The other languages of Spain will also be official in the respective autonomous communities, in accordance with their statutes

(3) The richness of the linguistic modalities of Spain is a cultural patrimony which will be the object of special respect and protection

## **4. Flag**

(1) The Spanish flag is formed by three horizontal stripes: red, yellow and red, with the yellow stripe being twice as wide as each of the red stripes

(2) Recognition of flags and ensigns of the autonomous communities is admissible by law. These will be used beside the flag of Spain on their public buildings and in their official acts

## **5. Capital Madrid**

The capital of the State is the city of Madrid

## **6. Political Parties**

Political parties express democratic pluralism, assist in the formulation and manifestation of the popular will, and are a basic instrument for political participation. Their creation and the exercise of their activity are free within the observance of the Constitution and the laws. Their internal structure and operation must be democratic

## **7. Unions**

Worker unions and associations of employers contribute to the defense and promotion of their own economic and social interests. Their creation and the exercise of their activity are free within the observance of the Constitution and the laws. Their internal structure and operation must be democratic

## **8. Armed Forces**

(1) The Armed Forces, constituting the Land Army, the Navy and the Air Force, have as their mission the guarantee of the sovereignty and independence of Spain, the defense of its territorial integrity and the constitutional order

(2) An organic law will regulate the bases of the military organization in conformity with the principles of the present Constitution

#### **9. Rule of Law**

(1) The citizens and public powers are subject to the Constitution and the legal order

(2) It is the responsibility of the public powers to promote conditions so that liberty and equality of the individual and the groups he joins will be real and effective, to remove those obstacles which impede or make difficult their full implementation, and to facilitate participation of all citizens in the political, economic, cultural, and social life

(3) The Constitution guarantees the principle of legality, the normative order, the publication of the norms, the non-retroactivity of punitive provisions which are not favourable to, or which restrict individual rights, legal security, and the interdiction of arbitrariness of public powers

### **TITLE I**

## **BASIC RIGHTS AND DUTIES**

### **CHAPTER 0**

#### **GENERAL PROVISION**

#### **10. Human Dignity, Human Rights**

(1) The dignity of the person, the inviolable rights which are inherent, the free development of the personality, respect for the law and the rights of others, are the foundation of political order and social peace

(2) The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain

### **CHAPTER I**

## **SPANIARDS AND ALIENS**

#### **11. Spanish Nationality**

(1) Spanish nationality is acquired, preserved, and lost in accordance with provisions established by law

(2) No one of Spanish birth may be deprived of his nationality

(3) The State may make dual nationality treaties with the Ibero-American countries and with those which may have had, or have, a special bond with Spain. In these countries, even when they do not grant their own citizens a reciprocal right, Spaniards may become naturalized without losing their nationality of origin

**12. Majority**

Spaniards become adults at 18 years of age

**13. Aliens, Extradition, Asylum**

(1) Aliens in Spain may enjoy the public freedoms guaranteed by the present Title under the terms which treaties or laws may establish

(2) Only Spaniards shall have the rights recognized in Article 23 except that which in keeping with the criteria of reciprocity may be established by treaty or law for the right to active and passive suffrage in municipal elections

(3) Extradition will only be granted in compliance with a treaty or the law in keeping with the principle of reciprocity Excluded from extradition are political crimes and acts of terrorism not being considered as such

(4) The law shall establish the terms under which citizens of other countries and stateless persons may enjoy the right to asylum in Spain

**CHAPTER II****RIGHTS AND FREEDOMS****Section 0—General Provision****14 Equality**

Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance

**Section 1—Basic Rights, Public Liberties****15. Life, Personal Integrity, No Death Penalty**

Everyone has the right to life and physical and moral integrity and in no case may be subjected to torture or inhuman or degrading punishment or treatment The death penalty is abolished except in those cases which may be established by military penal law in times of war

**16 Religion, Belief, No State Church**

(1) Freedom of ideology, religion, and cult of individuals and communities is guaranteed without any limitation in their demonstrations other than that which is necessary for the maintenance of public order protected by law

(2) No one may be obliged to make a declaration on his ideology, religion or beliefs

(3) No religion shall have a State character The public powers shall take into account the religious beliefs of Spanish society and maintain the appropriate relations of cooperation with the Catholic Church and other denominations

**17. Personal Liberty**

(1) Every person has the right to liberty and security. No one may be deprived of his liberty without observance of the provisions of this Article and only in the cases and in the form prescribed by law.

(2) Preventive arrest may not last more than the time strictly necessary for the investigations which tend to clarify events, and in every case, within a maximum period of 72 hours, the person detained must be freed or placed at the disposal of the judicial authority.

(3) Every person arrested must be informed immediately, and in a way that is understandable to him, about his rights and the reasons for his arrest, and he may not be forced to make a statement. The assistance of an attorney to the arrested is guaranteed during police and judicial proceedings under the terms established by law.

(4) The law will regulate a process of habeas corpus so that any person who is illegally arrested may be immediately placed at the disposal of the judiciary. The maximum period of provisional imprisonment shall also be determined by law.

**18. Honour, Privacy, Home, Secrecy of Communication**

(1) The right of honour, personal, and family privacy and identity is guaranteed.

(2) The home is inviolable. No entry or search may be made without legal authority except with the express consent of the owners or in the case of a *flagrante delicto*.

(3) Secrecy of communications, particularly regarding postal, telegraphic, and telephone communication, is guaranteed, except for infractions by judicial order.

(4) The law shall limit the use of information, to guarantee personal and family honour, the privacy of citizens, and the full exercise of their rights.

**19. Freedom to Move**

Spaniards have the right to freely select their residence and to travel in the national territory. They also have the right to enter and leave Spain freely under the conditions established by law. That right cannot be restricted because of political or ideological motives.

**20. Specific Freedoms, Restrictions**

(1) The following rights are recognized and protected:

- a) To express and disseminate thoughts freely through words, writing, or any other means of reproduction.

- b) Literary, artistic, scientific, and technical production, and creation.

- c) Academic freedom.

- d) To communicate or receive freely truthful information through any means of dissemination. The law shall regulate the right to the protection of the clause on conscience and professional secrecy in the exercise of these freedoms.

(2) The exercise of these rights cannot be restricted through any type of prior censorship

(3) The law shall regulate the organization and parliamentary control of the means of social communication owned by the State or any public entity and shall guarantee access to those means by significant social and political groups, respecting the pluralism of society and the various languages of Spain

(4) These liberties find their limitation in the respect for the rights recognized in this Title, in the precepts of the laws which develop it and, especially, in the right to honour, privacy, personal identity, and protection of youth and childhood

(5) The seizure of publications, recordings, or other means of information may only be determined by a judicial resolution

#### **21. Assembly**

(1) The right to peaceful, unarmed assembly is recognized. The exercise of this right does not require prior authorization

(2) In the cases of meetings in places of public transit and of manifestations prior notification shall be given to the authorities, which can only forbid them when there are reasons based on disturbances of public order with danger for persons or property

#### **22. Association**

(1) The right to association is recognized

(2) Associations which pursue purposes or use methods which are classified as crimes, are illegal

(3) Associations constituted under the provisions of this Article must register for purposes of public information only

(4) Associations may only be dissolved or their activities suspended by virtue of a motivated judicial order

(5) Secret and paramilitary associations are prohibited

#### **23. Participation, Election, Office**

(1) Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage

(2) They also have the right to accede, under conditions of equality, to public functions and positions, in accordance with the requirements established by law

#### **24. Legal Remedies**

(1) All persons have the right to the effective protection of the Judges and courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence

(2) Likewise, all have the right to the ordinary Judge predetermined by law, to defence and assistance of an attorney, to be informed of the accusation

made against them, to a public trial without delays and with all the guarantees, to utilize the means of proof pertinent to their defense, to refrain from self-incrimination, to refrain from pleading guilty, and to the presumption of innocence. The law shall regulate the cases in which for reasons of family relationship or professional secrecy it shall not be obligatory to make declarations concerning allegedly criminal actions.

## **25. Nulla poena sine lege, Rights of Prisoners**

(1) No one may be convicted or sentenced for actions or omissions which when committed did not constitute a crime, misdemeanor, or administrative infringement as established by legislation in force at that moment.

(2) Prison sentences and security measures shall be oriented towards reeducation and social rehabilitation and may not consist of forced labor. The person sentenced to prison shall enjoy, during his imprisonment, the fundamental rights contained in this Chapter, with the exception of those which are expressly restricted by the content of the prison sentence, the purpose of the sentence, and the penitentiary law. In any case, he shall have the right to remunerated work and the pertinent benefits of Social Security, as well as access to culture and the integral development of his personality.

(3) The Civil Administration may not impose sanctions which directly or indirectly imply deprivation of freedom.

## **26. No Courts of Honor**

Courts of Honor are prohibited within the framework of the civil administration or professional organizations.

## **27. Education**

(1) Everyone has the right to education. Freedom of instruction is recognized.

(2) The objective of education shall be the full development of the human personality in respect for the democratic principles of coexistence and the basic rights and liberties.

(3) The public authorities guarantee the right which will assist parents to have their children receive the religious and moral formation which is in keeping with their own convictions.

(4) Basic education is obligatory and free.

(5) The public authorities guarantee the right of all to education through a general educational program, with the effective participation of all the sectors affected, and the creation of educational centers.

(6) The freedom of physical and legal persons to create educational centers which respect constitutional principles, is recognized.

(7) Teachers, parents, and in some cases, the students, shall participate in the control and management of all centers maintained by the Administration with public funds, under the terms established by law.

(8) The public authorities shall inspect and standardize the educational system so as to guarantee compliance with the laws

(9) The public authorities shall help the teaching centers which meet the requirements established by law

(10) The autonomy of universities is recognized under the terms established by law

## 28. Unions, Strikes

(1) All have the right to unite freely. The law may limit or except from the exercise of this right the Armed Forces or Military Institutes, or the other Corps subject to military discipline and shall regulate the peculiarities of its exercise for political functionaries. Syndical liberty includes the right to found unions and to join the union of one's choice, as well as the right of the unions to form confederations to found international union organizations or to join them. No one may be forced to join a union.

(2) The right of workers to strike in defense of their interests is recognized. The law which regulates the exercise of this right shall establish precise guarantees to insure the maintenance of essential services of the community.

## 29. Petition

(1) All Spaniards shall have the right to personal and collective petition, in writing, in the form and with the effects the law shall define.

(2) Members of the Armed Forces, Institutes, or the Corps subject to military discipline, may exercise this right only individually and in accordance with the provisions of their specific legislation.

## Section 2—Rights and Duties of Citizens

### 30. Military, Civilian, Emergency Duties

(1) Citizens have the right and the duty to defend Spain.

(2) The law shall determine the military obligations of Spaniards and shall regulate with all due guarantees, conscientious objection as well as other causes for exemption from compulsory military service, and it may, when appropriate, impose a substitute social service.

(3) A civilian service may be established for the accomplishment of objectives of general interest.

(4) The duties of citizens in cases of serious risk, catastrophe, or public calamity may be regulated by law.

### 31. Taxes

(1) Everyone shall contribute to the sustenance of public expenditures according to their economic capacity through a just tax system based on the principles of equity and progressive taxation which in no case shall be of a confiscation scope.

(2) Public expenditure shall realize an equitable allocation of public resources and its programming and execution shall be in keeping with criteria for efficiency and economy

(3) Personal or property contributions of a public nature may only be made in accordance with the law

### **32. Marriage, Matrimonial Equality**

(1) Man and woman have the right to contract matrimony with full legal equality.

(2) The law shall regulate the forms of matrimony, the age and capacity for concluding it, the rights and duties of the spouses, causes for separation and dissolution and their effects

### **33. Property, Inheritance**

(1) The right to private property and inheritance is recognized

(2) The social function of these rights shall determine the limits of their content in accordance with the law

(3) No one may be deprived of his property and rights except for justified cause of public utility or social interest after proper indemnification in accordance with the provisions of law.

### **34. Foundations**

(1) The right to foundation for purposes of general interest is recognized in accordance with the law

(2) The provisions of Article 22 (2) and (4) shall also be applicable to foundations

### **35. Work**

(1) All Spaniards have the duty to work and the right to work, to the free election of profession or office career, to advancement through work, and to a sufficient remuneration to satisfy their needs and those of their family, while in no case can there be discrimination for reasons of sex

(2) The law shall regulate a statute for workers

### **36. Professional Colleges, Degrees**

The law shall regulate the peculiarities of the legal governance of the Professional Colleges and the exercise of professions requiring academic degrees. The internal structure and functioning of the Colleges must be democratic

### **37. Labour Agreements, Labour Conflicts**

(1) The law shall guarantee the right to collective labour negotiations between the representatives of workers and employers, as well as the binding force of agreements

(2) The right of the workers and employers to adopt measures concerning collective conflict is recognized. The law which shall regulate the exercise of this right, without prejudice to the limitations it may establish,

shall include precise guarantees to insure the functioning of the essential services of the community

### 38 Free Enterprise

Free enterprise within the framework of a market economy is recognized. The public authorities guarantee and protect its exercise and the defense of productivity in accordance with the demands of the general economy, and as the case may be, in keeping with planning

## CHAPTER III

### GUIDING PRINCIPLES OF ECONOMIC AND SOCIAL POLICY

#### 39. Family, Children

(1) The public authorities shall assure the social, economic, and legal protection of the family

(2) The public authorities shall assure the complete protection of children, who are equal before the law regardless of their parentage and regardless of the marital status of their mothers. The law shall make it possible to investigate paternity

(3) Parents must provide their children, born in or out of wedlock, with assistance of every kind during the time they are minors and in other cases where it is legally proper

(4) Children shall enjoy the protection provided in international agreements which safeguard their rights

#### 40 Economic Policies, Worker Protection

(1) The public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of regional and personal income within the framework of a policy of economic stability. Special emphasis will be placed on the realization of a policy aimed at full employment

(2) Likewise, the public authorities shall promote a policy which guarantees professional training and readaptation, insures work safety and hygiene, and guarantees necessary rest through limitations on the length of the work day, paid periodic vacations, and the promotion of suitable centers

#### 41. Social Security, Unemployment Benefits

The public authorities shall maintain a public system of social security for all citizens which will guarantee social assistance and services which are sufficient in cases of need, especially in cases of unemployment. Complementary assistance and services shall be free

#### 42. Workers Abroad

The state shall especially try to safeguard the economic and social rights of Spanish workers abroad and orient its policy toward their return

**43. Health Protection, Sports, Leisure**

(1) The right to health protection is recognized

(2) It is incumbent upon the public authorities to organize and watch over public health and hygiene through preventive measures and through necessary care and services. The law shall establish the rights and duties of all in this respect

(3) The public authorities shall foster health education, physical education, and sports. Likewise, they shall facilitate adequate utilization of leisure

**44. Culture, Science**

(1) The public authorities shall promote and watch over access to culture, to which all have a right.

(2) The public authorities shall promote science and scientific and technical research for the benefit of the general interest

**45. Environment**

(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it

(2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity

(3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused

**46. National Heritage**

The public authorities shall guarantee the preservation, and promote the enrichment, of the historical, cultural, and artistic heritage of the peoples of Spain and the property that makes them up, regardless of their legal status and their ownership. The penal law shall punish any offenses against this heritage

**47. Housing**

All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies

**48. Participation of Youths**

The public authorities shall promote the conditions for the free and effective participation by the young in political, social, economic and cultural development

**49. Handicapped**

The public authorities shall implement a policy of prevention, treatment, rehabilitation, and integration of those who are physically, sensorially, or mentally handicapped, who shall be given the special attention which they require and be afforded special protection for the enjoyment of the rights which this Title grants to all citizens

**50. Old People, Pensions, Social Services**

To citizens in old age, the public authorities shall guarantee economic sufficiency through adequate and periodically updated pensions. Likewise, and independently of the family obligations they shall promote their welfare through a system of social services which shall take care of their specific problems of health, housing, culture, and leisure

**51. Consumer Protection**

(1) The public authorities shall guarantee the defense of the consumers and users, protecting their safety, health, and legitimate economic interests through effective procedures

(2) The public authorities shall promote the information and education of consumers and users, foster their organizations, and hear them in those questions which could affect them under the terms which the law shall establish

(3) Within the framework of the provisions of the foregoing paragraphs, the law shall regulate domestic commerce and the system of licensing commercial products

**52. Professional Organizations**

The law shall regulate the professional organizations which contribute to the defense of their own economic interests. Their internal structure and operation must be democratic

**CHAPTER IV****GUARANTEES AND FUNDAMENTAL RIGHTS****53. Regulation, Judicial Protection**

(1) The rights and liberties recognized in the second Chapter of the present Title are binding on all public authorities. Only by law, which in every case must respect their essential content, could the exercise of such rights and liberties be regulated, and they shall be protected in accordance with the provisions of Article 161 (1) b)

(2) Any citizen may make a claim to the liberties and rights recognized in Article 13 and the first section of the second Chapter before the regular courts through a process based on the principles of preference and speed and through the recourse before the Constitutional Court. This last recourse shall be applicable to objections of conscience recognized in Article 30

(3) Recognition, respect, and protection of the principles recognized in the third Chapter shall guide positive legislation, judicial practice and the actions by public authorities. They may also be argued before ordinary jurisdiction through procedures established in the laws affecting them.

#### 54. High Commissioner, Parliament

An organic law shall regulate the institution of the Defender of the People as the High Commissioner of the Parliament, appointed for the protection of the rights contained in this Title, for which purpose he may supervise the activity of the administration, informing the Parliament of it.

### CHAPTER V

## SUSPENSION OF RIGHTS AND LIBERTIES

#### 55. Emergency, Siege, Terrorism

(1) The rights recognized in Articles 17, 18 (2) and (3), 19, 20 (1)(a) and (d) and (5), 21, 28 (2), and Article 37 (2) may be suspended when a state of emergency or siege is declared under the terms provided in the Constitution. Article 17 (3) is exempted from that which was established previously in the event of the declaration of a state of emergency.

(2) An organic law may determine the manner and the cases in which, in an individual manner and with the necessary judicial intervention and adequate parliamentary control, the rights recognized in Article 17 (2) and 18 (2) and (3) may be suspended for certain persons with respect to investigations having to do with the activities of armed bands or terrorist elements.

The unwarranted or abusive utilization of the powers recognized in said organic law will result in criminal responsibility as a violation of the rights and liberties recognized by the laws.

### TITLE II

## THE CROWN

#### 56. Head of State

(1) The King is the Head of State, the symbol of its unity and permanence. He arbitrates and moderates the regular functioning of the institutions, assumes the highest representation of the Spanish State in international relations, especially with the nations of its historical community and exercises the functions expressly attributed to him by the Constitution and the laws.

(2) His title is that of "King of Spain" and he may use the others which belong to the Crown.

(3) The person of the King is inviolable and is not subject to responsibility. His acts shall always be in the manner established in Article 61 and shall lack validity without that countersignature except as provided for by

**57. Succession**

(1) The Crown of Spain is hereditary for the successors of H M Don Juan Carlos I of Borbon, legitimate heir of the historic dynasty. Succession to the throne will follow the regular order of primogeniture and representation, the first line always having preference over subsequent lines, within the same line, the closer grade over the more remote, in the same grade, the male over the female, and in the same sex, the elder over the younger.

(2) The hereditary Prince, from his birth or from the time he acquires the claim, will have the title of Prince of Asturias and the other titles traditionally linked to the successor to the Crown of Spain.

(3) If all the lines entitled by law become extinct, the Parliament shall provide for the succession to the crown in the manner which is best for the interests of Spain.

(4) Those persons, who having the right to succession to the throne contract matrimony against the express prohibition by the King and the Parliament, shall be excluded, along with their descendants, from succession to the Crown.

(5) Abdications and renunciations and any doubt in fact or in law which may occur in the order of succession to the Crown, shall be resolved by an organic law.

**58. Queen Consort**

The Queen consort or the consort of the Queen may not assume constitutional functions except as provided for by the Regency.

**59. Minority, Incapacity**

(1) When the King is a minor, the King's father or mother, in their absence the oldest relative closest to succession to the Crown pursuant to the order established by the Constitution, shall immediately exercise the Regency during the King's minority.

(2) If the King becomes incapable of exercising his authority and this incapacity is recognized by the Parliament, the Prince heir to the Crown shall immediately begin to exercise the Regency if he is of age. If he is not, the procedure outlined in the previous paragraph will be adhered to until the Prince heir reaches adulthood.

(3) If there is no person who can exercise the Regency, it shall be appointed by the Parliament and shall be composed of one, three, or five persons.

(1) In order to exercise the Regency, it is necessary to be Spanish and of age.

(5) The Regency shall be exercised through constitutional mandate and always in the name of the King.

**60. Tutor**

(1) The tutor of the King who is a minor shall be the person named in the will by the deceased King provided that he is an adult and a Spaniard by

birth If he is not named, the father or the mother shall be the tutor as long as they remain widowed In their absence, the Parliament shall appoint someone, but the positions of Regent and tutor may not be held by the same person except in the case of the father, mother, or direct ascendants of the King

(2) The exercise of the tutorship is also incompatible with the exercise of any office of political representation

### 61. Oath

(1) The King, on being proclaimed before the Parliament, will swear to faithfully carry out his functions, to obey the Constitution and the laws and ensure that they are obeyed, and to respect the rights of citizens and the Autonomous Communities

(2) The Prince heir, when coming of age, and the Regent or Regents when they assume their functions, will swear the same oath as well as that of loyalty to the King

### 62. Competencies

It is incumbent upon the King

- a) to approve and promulgate laws,
- b) to convoke and dissolve the Parliament and to call elections under the terms provided for in the Constitution,
- c) to convoke a referendum in the cases provided for in the Constitution,
- d) to propose the candidate for the President of the Government and to appoint him, or when required, to terminate his functions under the terms provided in the Constitution,
- e) to appoint and dismiss the members of the Government at the proposal of its President,
- f) to issue the decrees approved in the Council of Ministers, confer civilian and military positions, and award honours and distinctions in accordance with the law,
- g) to be informed of the affairs of State and for this purpose preside over the sessions of the Council of Ministers when he deems it appropriate at the request of the President of the Government,
- h) to exercise supreme command of the Armed Forces,
- i) to exercise the right of clemency pursuant to a law, which cannot authorize general pardons,
- j) to be the High Patron of the Royal Academies

### 63. Foreign Relations, Treaties, War

(1) The King accredits Ambassadors and other diplomatic representatives Foreign representatives in Spain are accredited before him

(2) It is incumbent on the King to express the consent of the State to obligate itself internationally through treaties in conformity with the Constitution and the laws

(3) It is incumbent on the King, after authorization by the Parliament, to declare war and make peace

#### **64. Countersignature**

(1) The actions of the King shall be countersigned by the President of the Government and, when appropriate, by the competent Ministers. The nomination and appointment of the President of the Government and the dissolution provided for in Article 93 shall be countersigned by the President of the House of Representatives

(2) The persons who countersign the acts of the King shall be responsible for them

#### **65. Remuneration**

(1) The King receives an overall amount from the State budget for the maintenance of his Family and Household and disposes it freely

(2) The King freely appoints and relieves the civilian and military members of his Household

### **TITLE III PARLIAMENT**

#### **CHAPTER I CHAMBERS**

#### **66. Structure, Competencies, Inviolability**

(1) The Parliament represents the Spanish people and is formed by the House of Representatives and the Senate

(2) The Parliament exercises the legislative power of the State, approves its budgets, controls the action of the Government, and has the other competencies assigned by the Constitution

(3) The Parliament is inviolable

#### **67. Incompatibility, Free Mandate**

(1) No one may be a member of the two Chambers simultaneously nor be a member of an Autonomous Community Assembly and a Deputy to the House of Representatives at the same time

(2) The members of the Parliament are not bound by an imperative mandate

(3) The meetings of parliamentarians, which are held without the regulatory convocation, shall not be binding on the Chambers and they may not exercise their functions nor exercise their privileges

#### **68. Election**

(1) The House of Representatives is composed of a minimum of 300 and a maximum of 100 Deputies elected by universal free equal direct, and secret suffrage under the terms established by law

(2) The electoral district is the province. The cities of Ceuta and Melilla shall be represented by one Deputy each. The law shall distribute the total number of Deputies, assigning a minimum initial representation to each district and distributing the remainder in proportion to the population.

(3) The election in each district shall be conducted in keeping with the criteria of proportional representation.

(4) The House of Representatives is elected for four years. The term of Deputies ends four years after their election or on the day of the dissolution of the Chamber.

(5) All Spaniards who have full use of their political rights are voters and eligible for office. The law recognizes, and the State shall facilitate, the exercise of the right to vote of Spaniards who are outside the territory of Spain.

(6) Elections will take place between thirty and sixty days after the termination of the mandate. The elected House of Representatives must be convoked within twenty-five days after the holding of elections.

#### **69. Senate**

(1) The Senate is the Chamber of territorial representation.

(2) In each province, four senators will be elected by universal, free, equal, direct, and secret suffrage by the voters of each of them under the terms established by an organic law.

(3) In the island provinces, each island or grouping of them with a representation or Insular Council shall be a voting district for the purposes of the election of senators, three of them going to each of the major islands—Grand Canary, Mallorca, and Tenerife—and one each to the following islands or groupings: Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote, and La Palma.

(4) The cities of Ceuta and Melilla shall elect two senators each.

(5) The Autonomous Communities shall also designate one Senator and one Additional Senator for each million inhabitants in their respective territories. The designation shall be made by the Legislative Assembly, or in its absence, by the higher collective body of the Autonomous Community pursuant to the provisions of the statutes, which in any case, shall insure adequate proportional representation.

(6) The Senate is elected for four years. The term of the Senators shall end four years after their election or on the day of the dissolution of the Chamber.

#### **70. Ineligibility, Incompatibility**

(1) The electoral law shall determine the reasons for ineligibility and incompatibility of Deputies and Senators, which shall include in any case,

a) the members of the Constitutional Court,

b) the high officers of the State Administration, as determined by law, with the exception of the members of the Government,

- c) the Defender of the People,
- d) the Magistrates, Judges, and Prosecutors on active duty;
- e) the professional military and members of the Armed Forces, Corps of Security, and police on active duty, and
- f) the members of the Electoral Commissions

(2) The validity of the records and credentials of the members of both Chambers shall be subject to judicial control under the terms to be established by the electoral law

#### 71 Indemnity, Immunity, Remuneration

(1) The Deputies and Senators enjoy indemnity for the opinions expressed during the exercise of their functions

(2) During the period of their mandate, the Deputies and Senators enjoy immunity and may only be arrested in case of flagrante delicto. They may not be indicted or tried without prior authorization of the respective Chamber

(3) In actions against Deputies and Senators, the Criminal Section of the Supreme Court shall be competent

(4) The Deputies and Senators shall receive a remuneration which shall be fixed by the respective Chamber

#### 72. Self-Organization

(1) The Chambers establish their own regulations, autonomously approve their own budgets and by common accord regulate the Personnel Statute of the Parliament. The Regulations and their reform shall be submitted to a final voting in their entirety which shall require an absolute majority

(2) The Chambers elect their respective Presidents and the other members of their committees. Joint sessions shall be presided over by the President of the House of Representatives and shall be governed by a Regulation of the Parliament approved by an absolute majority of each Chamber

(3) The Presidents of the Chambers will exercise in their name all administrative powers and police authority in the interior of their respective Chambers

#### 73 Sessions

(1) The Chambers shall meet annually in two ordinary periods of sessions, the first from September to December and the second from February to June

(2) The Chambers may meet in extraordinary periods of sessions at the request of the Government, the Permanent Deputation, or by the absolute majority of the members of either of the two Chambers. The extraordinary periods of sessions must be convoked with a specific agenda and shall be closed once it has been dealt with

#### 74 Majority

(1) The Chambers shall meet in joint sessions to exercise the non-legislative competencies which Title II expressly authorizes for the Parliament

(2) The decisions of the Parliament specified in Articles 94 (1), 145 (2), and 158 (2) shall be adopted by the majority of each of the Chambers. In the first case, the procedure shall be initiated by the House of Representatives, in the other two cases by the Senate. In both cases, if there is no agreement between Senate and the House of Representatives, an attempt will be made to obtain it by a mixed Commission composed of an equal number of Deputies and Senators. The Commission presents a text which shall be voted upon by both Chambers. If it is not approved in the established form, the House of Representatives shall decide by an absolute majority.

#### **75. Responsibilities**

(1) The Chambers shall work in plenary sessions and in Commissions.

(2) The Chambers may delegate to the Permanent Legislative Commissions the approval of bills or proposals of law. The plenary session, however, may at any time require debate and voting on any bill or proposal of law which has been the object of this delegation.

(3) Excluded from the provisions of the foregoing paragraph are constitutional reform, international affairs, organic and basic laws, and the general budget.

#### **76. Investigating Commissions**

(1) The House of Representatives and the Senate, and if necessary both Chambers jointly, may appoint investigating Commissions on any subject of public interest. Their conclusions shall not be binding on the courts nor will they affect judicial decisions, but they may be transmitted to the Public Prosecutor for the exercise of the necessary actions when required.

(2) Appearance before the Chambers on request shall be obligatory. The law shall regulate the sanctions which may be imposed for non-compliance with this obligation.

#### **77. Petitions**

(1) The Chambers may receive individual and collective petitions, always in writing, while direct presentation by citizens is prohibited.

(2) The Chambers may forward to the Government the petitions they receive. The Government is obliged to explain itself on the contents whenever the Chambers so request.

#### **78. Permanent Deputations**

(1) In each Chamber, there shall be a Permanent Deputation composed of a minimum of twenty-one members who shall represent the parliamentary groups in proportion to their numerical importance.

(2) The Permanent Deputations shall be presided over by the President of the respective Chamber, they shall have those functions listed in Article 73, they shall assume the authority of the Chambers according to Articles 86 and 116 in the case that the Chambers have been dissolved or their term expired, and they shall maintain a watch over the powers of the Chambers when they are not in session.

(3) On the expiration of the mandate or in case of dissolution, the Permanent Deputations shall continue to exercise its functions until the constitution of new Parliament

(4) When a Chamber meets, its Permanent Deputation shall give an account of the matters dealt with and of its decisions

#### **79. Presence, Quorum, Personal Vote**

(1) In order to adopt agreements, the Chambers must be in a regular session with the attendance of the majority of their members

(2) In order to be valid, such agreements must be approved by the majority of the members present, without prejudice to the special majorities which may be established by the Constitution or the organic laws or the Regulations established by the Chambers for the election of persons

(3) The vote of the Senators and Deputies is personal and cannot be delegated

#### **80. Publicity**

The plenary sessions of the Chambers shall be public except when there is an agreement against it in each Chamber, an agreement which must be arrived at by an absolute majority or by a change in the Regulations

## **CHAPTER II PREPARATION OF LAWS**

#### **81. Organic Laws**

(1) Organic laws are those relative to the exercise of fundamental rights and public liberties, those approved by the Statutes of Autonomy and the general electoral system, and the others provided for in the Constitution

(2) The approval, modification, or repeal of organic laws shall require an absolute majority of the House of Representatives in a final vote on the entire Bill

#### **82. Delegation**

(1) The Parliament may delegate to the Government the power to set norms with the status law on specific matters not included in the previous Article

(2) Legislative delegation must be granted by means of a basic law when its objective is the formation of articulated texts, or by an ordinary law when it is a matter of arranging several legal texts into a single one

(3) Legislative delegation must be granted to the Government in an express form for a concrete matter and with the establishment of a period for its exercise. The delegation becomes void when the Government has made use of it after the publication of the corresponding law. Such delegation cannot be understood to be granted implicitly or for an indefinite period. The sub-delegation to different authorities, even within the Government itself, is not permitted

(4) The basic laws shall precisely limit the object and scope of legislative delegation and the principles and criteria which must be followed in its exercise

(5) Authorization for the consolidation of legal texts shall define the normative scope to which the content of the delegation referred, specifying whether it shall be limited to the mere formulation into a unified text or whether it includes regulation, clarification, and harmonization of the legal texts which are to be recast

(6) Without prejudice to the proper competence of the courts, the laws on delegation may establish additional formulas for control in each case

### **83. Prohibited Laws**

Basic laws may in no case do the following

- a) Authorize the modification of the basic laws,
- b) Make provision for the enactment of norms with retroactive character

### **84. Delegation Conflict**

When a proposed law or an amendment is contrary to a valid legislative delegation, the Government may oppose its processing. In such a case, a law proposal may be presented for the total or partial abolishment of the law on delegation

### **85. Legislative Decrees**

The dispositions of the Government containing delegated legislation shall receive the title of Legislative Decrees

### **86. Decree-Laws**

(1) In the case of extraordinary and urgent necessity, the Government may issue provisional legislative decisions which shall take the form of Decree-laws and which may not affect the regulation of the basic institution of the State, the rights, duties, and liberties of the citizens which are regulated in Title I, the systems of Autonomous Communities, or the general electoral Law

(2) The Decree-laws must be immediately submitted for debate and voting by the entire House of Representatives of Deputies convoked for that purpose, if it is not already in session, within a period of thirty days after their promulgation. The House of Representatives must expressly declare within that period its approval or repeal, for which purpose the Regulation shall establish a special and summary procedure

(3) During the period established in the foregoing paragraph, the Parliament may treat them as draft laws by emergency procedure

### **87. Initiative, Proposal, Public Initiative**

(1) Legislative initiative belongs to the Government, the House of Representatives, and the Senate, according to the Constitution and the regulations of the Chambers

(2) The Assemblies of the Autonomous Communities may request the Government to adopt a Bill or send to the Board of the House of Representatives a proposal of law, delegating a maximum of three members of their Assembly to that Chamber to defend it

(3) An organic law shall regulate the forms and requirements for the exercise of the popular initiative for the presentation of proposals of law. In any case no fewer than 500,000 valid signatures will be required. This initiative is not applicable to organic laws, taxation, or international affairs nor to the prerogative of pardon

#### **88. Approval of Bills**

Bills shall be approved in the Council of Ministers, which shall submit them to the House of Representatives accompanied by an exposition of the motives and the antecedents which are necessary for action

#### **89. Processing Proposals**

(1) The processing of proposals of law shall be regulated by the Regulations of the Chambers without the priority due to Bills impeding the exercise of legislative initiative under the terms regulated by Article 87

(2) Proposals of law, which in accordance with Article 87 are taken under consideration by the Senate, shall be sent to the House of Representatives for processing as such

#### **90. Veto and Amendment of Bills**

(1) Once an ordinary or organic Bill has been approved by the Deputies of the House of Representatives, its President shall immediately notify the President of the Senate, who shall submit it for its deliberation

(2) The Senate, within a period of two months after the day of the receipt of the text, may, through a message explaining the reasons, veto it or introduce amendments to it. The veto must be approved by an absolute majority. The Bill cannot be submitted to the King for approval unless the House of Representatives ratifies the initial text, in the case of a veto by an absolute majority, or by a simple majority once two months have passed since the presentation of the text, or express itself on the amendments, stating whether or not it accepts them by a simple majority

(3) The period of two months which the Senate has to veto or amend the Bill shall be reduced to twenty calendar days for those Bills declared urgent by the Government or by the House of Representatives

#### **91. Promulgation**

The King shall sanction the laws approved by the Parliament within the period of fifteen days and shall promulgate them and order their immediate publication

#### **92. Consultative Referendum**

(1) Political decisions of special importance may be submitted for a consultative referendum of all the citizens

(2) The referendum shall be convoked by the King at the proposal of the President of the Government after previous authorization by the House of Representatives

(3) An organic law shall regulate the conditions and the procedure of the different kinds of referendums provided for in this Constitution

### CHAPTER III INTERNATIONAL TREATIES

#### 93. Transfer of Sovereignty

By means of an organic law, authorization may be established for the conclusion of treaties which attribute to an international organization or institution the exercise of competencies derived from the Constitution. It is the responsibility of the Parliament or the Government, depending on the cases, to guarantee compliance with these treaties and the resolutions emanating from the international or supranational organizations who have been entitled by this session

#### 94. Prior Authorization

(1) The giving of the consent of the State to obligate itself to something by means of treaties or agreements shall require prior authorization of the Parliament in the following cases

- a) Treaties of a political nature,
- b) Treaties or agreements of a military nature,
- c) Treaties or agreements which affect the territorial integrity of the State or the fundamental rights and duties established in Title I
- d) Treaties or agreements which imply important obligations for the public treasury,
- e) Treaties or agreements which involve modification or repeal of some law or require legislative measures for their execution

(2) The House of Representatives and the Senate shall be immediately informed of the conclusion of the treaties or agreements

#### 95. Conflict With Constitution

(1) The conclusion of an international treaty which contains stipulations contrary to the Constitution shall require a prior constitutional revision

(2) The Government or either of the Chambers may request the Constitutional Court to declare whether or not such a contradiction exists

#### 96. Amendment, Abolishment

(1) Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order. Their provisions may only be abolished, modified, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law.

(2) To denounce international treaties and agreements, the same procedure established for their approval in Article 94 shall be used

**TITLE IV****GOVERNMENT AND ADMINISTRATION****97. Directing Policy**

The Government directs domestic and foreign policy, civil and military Administration, and the defense of the State. It exercises the executive function and regulatory power in accordance with the Constitution and the laws.

**98. Composition, President, Incompatibilities**

(1) The Government is composed of the President, Vice Presidents, and in some cases the Ministers and other members the law may establish.

(2) The President directs the actions of the Government and coordinates the functions of the other members of it without prejudice to their competence and direct responsibility in their activity.

(3) The members of the Government may not exercise representative functions other than those of the parliamentary mandate itself, nor any other public function which does not derive from their office, nor any professional or mercantile activity whatsoever.

(4) A law shall regulate the Statute and the incompatibilities of the members of the Government.

**99. Election**

(1) After each renewal of the House of Representatives and in the other cases provided for by the Constitution, the King shall, after consultation with the representatives designated by the political groups represented in parliament, and through the President of the House of Representatives propose a candidate for the Presidency of the Government.

(2) The proposed candidate, in conformity with the provisions of the foregoing paragraph, shall submit to the House of Representatives the political program of the Government he intends to form and shall seek the confidence of the Chamber.

(3) If the House of Representatives, by an absolute majority of its members, grants its confidence to said candidate, the King will appoint him President. If said majority is not obtained, the same proposal shall be submitted to a new vote 98 hours after the former, and confidence shall be understood to have been granted if a simple majority is obtained.

(4) If after the aforementioned votes are cast, confidence is not granted for investiture, successive proposals will be made in the manner foreseen in the foregoing paragraphs.

(5) If within two months from the first voting for investiture no candidate has obtained the confidence of the House of Representatives, the King shall dissolve both Chambers and call for new elections with the concurrence of the President of the House of Representatives.

100 The other members of the Government shall be appointed and dismissed by the King at the proposal of its President

#### 101. Resignation

(1) The Government shall resign after the holding of general elections in the cases of the loss of confidence by Parliament as stipulated in the Constitution, or because of the resignation or death of its President

(2) But the outgoing Government shall continue in its functions until the new Government takes office

#### 102. Criminal Responsibility

(1) The Criminal Division of the Supreme Court shall have jurisdiction in the cases of criminal responsibility of the President and the other members of the Government

(2) If the charge were treason or any crime against the security of the State in the exercise of their functions, it could only be brought against them through the initiative of one-fourth of the members of the House of Representatives and with the approval of the absolute majority thereof

(3) The royal prerogative of pardon shall not be applicable to any of the provisions of the present Article

#### 103. Public Administration

(1) The Public Administration serves the general interest with objectivity and it acts in accordance with the principles of efficacy, hierarchy, decentralization, deconcentration, and coordination while fully complying with the law and legality

(2) The organs of the Administration of the State are created, governed, and coordinated in accordance with the law

(3) The law shall regulate the statute of the public officials, the access to civil service in accordance with the principles of merit and ability, the system under which they exercise their right to form unions, the system of incompatibilities, and the safeguards for political impartiality in the exercise of their functions

#### 104. Security Forces and Corps

(1) The Security Forces and Corps which are instruments of the Government shall have the mission of protecting the free exercise of rights and liberties and that of guaranteeing the security of the citizens

(2) An organic law shall determine the functions, basic principles of action, and the statutes of the Security Forces and Corps

#### 105. Guarantees

The law shall regulate

a) The hearing of citizens, directly or through the organizations and associations recognized by the law, in the process of elaborating the administrative decisions which affect them,

b) access by the citizens to the administrative archives and registers except where it affects the security and defense of the State, the investigation of crimes, and the privacy of persons, and

c) the procedure for administrative actions and for guaranteeing when appropriate the hearing of interested persons

#### **106. Control, Indemnification**

(1) The courts control the regulatory power and the legality of administrative acts as well as its compliance with the objectives which justify it.

(2) Private individuals, under the terms established by the law, shall have the right to be indemnified for any harm they suffer in any of their property and rights, except in the cases of force majeure, whenever such harm is the result of the functioning of the public services

#### **107. Council of State**

The Council of State is the supreme consultative body of the Government. An organic law shall regulate its composition and competence

### ***TITLE V***

## **GOVERNMENT AND PARLIAMENT**

#### **108. Responsibility**

The Government in its political conduct is collectively accountable before the House of Representatives

#### **109. Information, Assistance**

The Chambers and their Commissions may request, through their Presidents, the information and assistance they need from the Government and its Departments and from any authority of the State and the Autonomous Communities

#### **110. Presence**

(1) The Chambers and their Commissions may require the presence of the members of the Government

(2) The members of the Government are entitled to have access to the sessions of the Chambers and to their Commissions and are entitled to be heard in them, and they may request that officials of their departments present information to them

#### **111. Interpellation**

(1) The Government and each of its members are subject to interpellations or questions put to them in the Chambers. The rules shall establish a weekly minimum time for this type of debate

(2) Any interpellation may lead to a motion in which the Chamber can express its position

**112. Vote of Confidence**

The President of the Government, after deliberation by the Council of Ministers, may pose before the House of Representatives the question of confidence on his program or on a declaration of general policy. Confidence shall be taken as granted when the absolute majority of the Deputies vote for it.

**113. Motion of Censure, Vote of No-confidence**

(1) The House of Representatives may require political responsibility from the Government by means of the adoption by an absolute majority of a motion of censure.

(2) The motion of censure must be proposed by at least one-tenth of the Deputies and must include a candidate to the office of the Presidency of the Government.

(3) The motion of censure cannot be voted on until five days after its presentation. During the first two days of this period, alternative motions may be presented.

(4) If the motion of censure is not approved by the House of Representatives, its signers cannot present another during the same period of sessions.

**114. Resignation, New Appointment**

(1) If the House of Representatives denies its confidence to the Government, it must present its resignation to the King, the President of the Government then to be designated pursuant to the provisions of Article 99.

(2) If the House of Representatives adopts a motion of censure, the Government shall present its resignation to the King and the candidate included in it shall be understood to have the confidence of the Chamber for the purposes specified in Article 92. The King shall appoint him President of the Government.

**115. Dissolution of Parliament**

(1) The President of the Government, after deliberation of the Council of Ministers, and on his exclusive responsibility, may propose the dissolution of the House of Representatives, the Senate, and the Parliament, which shall be decreed by the King. The dissolution decree shall establish the date of the elections.

(2) The proposal for dissolution may not be presented when a motion of censure is in process.

(3) No new dissolution may take place before a year has passed since the previous one, except as provided for in Article 99 (5).

**116. Alarm, Emergency, Siege**

(1) An organic law shall regulate the states of alarm, emergency, and siege and the corresponding competencies and limitations.

(2) The state of alarm shall be declared by the Government, by means of a decree agreed upon by the Council of Ministers, for a maximum period of

fifteen days informing the House of Representatives, which has convened immediately for that purpose and without whose authorization the period cannot be extended. The decree shall determine the territorial area to which the effects of the declaration shall be excluded.

(3) The state of emergency shall be declared by the Government by means of a decree agreed upon in the Council of Ministers after authorization by the House of Representatives. The authorization and proclamation of a state of emergency must expressly determine its purposes, the territorial area to which it is extended and its duration, which cannot exceed thirty days but which may be extended for a like period with the same requirements.

(4) The state of siege shall be declared by the absolute majority of the House of Representatives at the exclusive proposal by the Government. The House of Representatives shall determine its territorial scope, duration, and conditions.

(5) The House of Representatives may not be dissolved while any of the states contained in the present article are in effect, the Chambers being automatically convoked if they are not in a period of sessions. Their functioning, like that of the other constitutional powers of the State, may not be interrupted during the effectiveness of these states. In the event that the House of Representatives has been dissolved or its mandate has expired if one of the situations exists which leads to one of the aforementioned states, the competencies of the House of Representatives shall be assumed by its Permanent Deputation.

(6) The declaration of the states of alarm, emergency, and siege shall not modify the principle of the responsibility of the Government or its agents as recognized in the Constitution and in the laws.

## TITLE VI JUDICIAL POWER

### 117. Independence, Courts, Tribunals

(1) Justice emanates from the people and is administered in the name of the King by Judges and Magistrates who are members of the judicial power and are independent, irremovable, responsible, and subject only to the rule of the law.

(2) The Judges and Magistrates cannot be separated, suspended, transferred, or retired except for causes and with the guarantees provided for in the law.

(3) The exercise of jurisdictional power in any type of processes passing judgments and having judgments executed belongs exclusively to the courts and tribunals as determined by the laws according to the norms on the competence and procedure which they establish.

(4) The courts and tribunals shall not exercise any functions other than those set forth in the previous paragraph and those expressly attributed to them by law to guarantee any right.

(5) The principle of jurisdictional unity is the basis of the organization and operation of the Tribunals. The law shall regulate the exercise of the military jurisdiction within a strictly military framework and in the event of a state of siege, in accordance with the principles of the Constitution.

(6) Exceptional Tribunals are prohibited.

#### **118. Powers**

It is obligatory to comply with the firm sentences and other resolutions of the Judges and the Tribunals, as well as to provide the collaboration required by them during the course of the process and in the execution of the judgment.

#### **119. Charges**

Justice shall be free of charge when the law so provides and in any case for those who have insufficient means to litigate.

#### **120. Publicity, Oral Proceedings**

(1) Judicial proceedings shall be public, with the exceptions provided for by the laws on procedure.

(2) The procedure shall be predominantly oral, particularly in criminal matters.

(3) The sentences shall always be motivated and shall be pronounced in public audience.

#### **121. Indemnification**

Damages caused by judicial error and those which may result from the abnormal operation of the Administration of Justice shall provide the right to an indemnification by the State, in accordance with the law.

#### **122. Organization, General Council**

(1) The organic law on judicial power shall determine the structure, operation, and administration of the courts and Tribunals, as well as the legal status of Judges and Magistrates, who form a single body, and of the personnel at the service of the Administration of Justice.

(2) The General Council of the Judicial Power is the governing organ of the latter. The organic law shall establish its statute and the system of incompatibilities for its members and their functions, particularly in matters of appointments, promotions, inspections, and disciplinary regime.

(3) The General Council of the Judicial Power shall consist of the President of the Supreme Court, who shall preside, and twenty members appointed by the King for a period of five years. Of these, twelve shall be Judges and Magistrates of all the judicial categories under the terms the organic law establishes, four will be proposed by the House of Representatives, and four by the Senate, elected in both cases by three-fifths majority of their members, from among lawyers and jurists of recognized competence with more than fifteen years in the exercise of their profession.

**123 Supreme Court**

(1) The Supreme Court, with jurisdiction all over Spain, is the highest jurisdictional organ in all orders, except in matters concerning constitutional guarantees

(2) The President of the Supreme Court shall be appointed by the King at the proposal of the General Council of the judicial branch in the manner determined by law

**124. Public Prosecutor**

(1) The Office of the Public Prosecutor, without prejudice to the functions entrusted to other organs, has the mission of promoting the action of justice in defense of legality, the rights of citizens and the public interest guarded by the law, ex-officio or on petition by interested parties, as well as watch over the independence of the courts and to procure before them the satisfaction of social interest

(2) The Public Prosecutor exercises its functions by means of its own organs in conformity with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of legality and impartiality

(3) The law shall regulate the organic statute of the Public Prosecutor

(4) The Public Prosecutor of the State shall be appointed by the King at the proposal of the Government after consultation with the General Council of the Judicial Power

**125 Popular Action, Juries**

Citizens may exercise popular action and participate in the administration of justice through the institution of the Jury in the manner that the law may determine for certain criminal trials, as well as in the customary and traditional courts

**126. Judicial Police**

The judicial police come under the Judges, the courts, and the Public Prosecutor in their functions of investigating crimes and finding and seizing the criminal under the terms the law may establish

127. (1) The Judges and Magistrates, as well as the Prosecutors while on active service, may not hold other public positions or belong to political parties or unions. The law shall establish the system and modalities of professional association of Judges, Magistrates, and Prosecutors

(2) The law shall establish the system of incompatibilities of the members of the judicial power which must insure their total independence

**TITLE VII****ECONOMY AND FINANCE****128 Public Wealth, State Intervention**

(1) All the wealth of the country in its distinct forms regardless of its ownership is subordinated to the general interest

(2) Public initiative in economic activity is recognized. By law, essential resources or services, particularly in the case of monopoly, can be reserved for the public sector and it may also declare the intervention in companies when the general interest so requires.

### **129. Participation, Cooperatives**

(1) The law shall establish the forms of participation of those interested in social security and in the activities of the public agencies whose function directly affects the quality of life or general welfare.

(2) The public authorities shall effectively promote the various forms of participation in enterprise and facilitate cooperative enterprises by means of appropriate legislation. They shall also establish the means that will facilitate access by the workers to ownership of the means of production.

### **130. Modernization, Development**

(1) The public authorities shall attend to the modernization and development of all economic sectors, particularly of agriculture, livestock raising, fishing, and handicrafts, in order to equalize the standard of living of all Spaniards.

(2) For the same purpose, special treatment shall be provided to the mountain areas.

### **131. Planning**

(1) The State, by means of law, may plan the general economic activity to attend to collective needs, balance and harmonize regional and sectoral development, and stimulate the growth of income and wealth and their more equitable distribution.

(2) The Government shall develop planning projects in accordance with the forecasts provided to it by the Autonomous Communities and the advice and collaboration by the unions and other professional, business, and economic organizations. A Council shall be created for this purpose, whose composition and operation shall be developed by law.

### **132. Public Property**

(1) The law shall regulate the legal regime of the property in the public domain and community property, based on the principle of inalienability, imprescriptibility, non-seizure, and unencumbrance.

(2) Property in the public state domain, as determined by law are, in any case, the offshore zone, the beaches, the territorial sea, the natural resources of the economic zone, and the continental shelf.

(3) The Patrimony of the State and National Patrimony, their administration, protection and preservation shall be regulated by law.

### **133. Taxation Power**

(1) The original power to establish taxes by means of law belongs exclusively to the State.

(2) The Autonomous Communities and the local Corporations may establish and levy taxes in accordance with the Constitution and the laws

(3) All fiscal profits which affect State taxes must be established by virtue of law.

(4) The public administrations may only contract financial obligations and incur expenditures in accordance with the law

#### 134. Budget

(1) It is incumbent upon the Government to prepare the General Budgets of the State and upon the Parliament to examine, amend, and approve them

(2) The General Budgets of the State shall be of an annual character and shall include the totality of expenditures and revenues of the public sector of the State, containing the amount of the fiscal benefits which affect the taxes of the State

(3) The Government must present to the House of Representatives the General Budgets of the State at least three months before the expiration of those of the previous year

(4) If the Budget law is not approved before the first day of the corresponding fiscal year, the Budgets of the previous fiscal year will automatically be considered extended until the approval of the new ones

(5) Once the General Budgets of the State have been approved the Government may present Bills which imply increases in public expenditure or a decrease in revenues corresponding to the same Budget year

(6) Every proposition or amendment which involves an increase in credits or a decrease in Budget revenues shall require the agreement of the Government before its transmission

(7) The law on Budgets cannot create taxes. It can modify them when a substantive tax law so provides

#### 135. Debt and Loans

(1) The Government must be authorized by law to contract a Public Debt or obtain loans

(2) Loans for satisfying the payment of interests and principal of the Public Debt of the State shall always be understood to be included in the state of expenditures of the Budgets and may not be the object of amendment or modification as long as they are in keeping with the law of issue

#### 136. Court of Accounts

(1) The Court of Accounts is the highest organ for checking the accounts and economic management of the State and the Public Sector. It shall be directly dependent of the Parliament and shall exercise its functions through delegation by them in the examination and verification of the General Accounts of the State

(2) The accounts of the State and the State Public Sector shall be rendered to the Court of Accounts and shall be examined by it

The Court of Accounts, without prejudice to its own jurisdiction, shall send an annual report to the Parliament which, when applicable, lists the violations or responsibilities, which in its opinion have occurred

(3) The members of the Court of Accounts shall enjoy the same independence and irremovability and shall be subject to the same incompatibilities as the Judges

(4) An organic law shall regulate the composition, organization, and operation of the Court of Accounts

## **TITLE VIII**

### **TERRITORIAL ORGANIZATION**

#### **CHAPTER I**

##### **GENERAL PRINCIPLES**

###### **137. Municipalities, Provinces, Autonomous Communities**

The State is organized territorially into municipalities, provinces, and the Autonomous Communities which may be constituted. All these entities enjoy autonomy for the management of their respective interests

###### **138. Economic Balance**

(1) The State guarantees the effective realization of the principle of solidarity vested in Article 2, insuring the establishment of a proper and just economic balance among the various parts of Spanish territory, with particular attention to the status of the island possessions

(2) The differences between the statutes of the various Autonomous Communities may in no case imply economic or social privileges

###### **139. Equal Rights, Free Movement**

(1) All Spaniards have the same rights and obligations in any part of the territory of the State

(2) No authority may adopt measures which directly or indirectly hinder the freedom of movement and establishment of persons and the free movement of goods throughout Spanish territory

#### **CHAPTER II**

##### **LOCAL ADMINISTRATION**

###### **140. Municipalities**

The Constitution guarantees the autonomy of the municipalities. These enjoy full legal personality. Their Government and administration is the responsibility of their own city Governments which are made up of the Mayors

and Councilmen. The Councilmen shall be elected by the residents of the municipality via universal equal, free, direct, and secret suffrage in the manner established by law. The Mayors shall be elected by the Councilmen or by the residents. The law shall regulate the conditions under which the system of an open Council may proceed.

#### 141. Provinces

(1) The province is a local entity with its own legal personality determined by the collection of municipalities and territorial division for the fulfillment of the activities of the State. Any alteration in the provincial limits must be approved by the Parliament by means of an organic law.

(2) The Government and Autonomous Administration of the provinces shall be trusted to Deputations or Corporations of a representative nature.

(3) Groupings of different municipalities of the province may be created.

(4) In the archipelagos, each island shall also have their own administration in the form of Cabildos or Councils.

#### 142. Financial Autonomy

The local treasuries must have the means necessary for carrying out the functions which the law attributes to the respective corporations and they shall be supported basically by their own taxes and by sharing those of the State and the Autonomous Communities.

### CHAPTER III AUTONOMOUS COMMUNITIES

#### 143. Autonomy Initiative

(1) In the exercise of the right to autonomy recognized in Article 2, bordering provinces with common historical, cultural and economic characteristics, the island territories, and the provinces with a historical regional unity may accede to self-government and constitute themselves into Autonomous Communities in accordance with the provisions of that Title and the respective statutes.

(2) The initiative for the autonomous process belongs to all the interested Deputations or to the pertinent inter-island body and to two-thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be fulfilled within a period of six months from the first agreement adopted on the subject by one of the interested local corporations.

(3) The initiative, in case it does not prosper, can only be repeated after the passage of five years.

#### 144. Authority Authorization

The Parliament by means of an organic law may for reasons of national interest

a) authorize the establishment of an Autonomous Community when its territorial area does not exceed that of a province and does not have the conditions set forth in Article 143,

b) authorize or accord, depending on the case, a statute of autonomy for territories which are not integrated into the provincial organization, and

c) substitute the initiative of the local corporations to which Article 143 (2) refers

#### **145. Restricted Cooperation**

(1) In no case shall the federation of Autonomous Communities be allowed

(2) The statutes may specify the conditions, requirements, and terms under which the Autonomous Communities may establish agreements among themselves for the administration and rendering of services pertaining to them, as well as the nature and purposes of the corresponding communication of them to the Parliament. Under other conditions, cooperation agreements between Autonomous Communities shall require the authorization of the Parliament

#### **146. Statute of Autonomy**

The draft of the statute shall be prepared by an assembly consisting of members of the Deputation or inter-insular organ of the affected provinces and by the Deputies and Senators elected in them and shall be forwarded to the Parliament for its enactment into law

#### **147. Adopting the Statute**

(1) Within the terms of the present Constitution, the statutes shall be the basic institutional norm of each Autonomous Community and the State shall recognize them and protect them as an integral part of its juridical order

(2) The statutes of autonomy must contain

a) The name of the Community which best corresponds to its historical identity,

b) The delimitation of its territory,

c) The name, organization, and seat of its own autonomous institutions;

d) The competencies assumed within the framework of the Constitution and the bases for the transfer of the corresponding services to them

(3) The reform of statutes shall be in accordance with the procedure established in them and shall in any case require the approval of the Parliament by means of an organic law

#### **148. Competencies**

(1) The Autonomous Communities may assume competencies in the following

- 1) organization of their institutions of self-government;
  - 2) alterations of the municipal boundaries contained within its area, and in general the functions which belong to the State administration concerning local corporations and whose transfer is authorized by the legislation on local Governments,
  - 3) regulation of the territory, urbanism, and housing,
  - 4) public works of interest to the Autonomous Community in its own territory,
  - 5) railways and highways whose itinerary runs completely in the territory of the Autonomous Community and within the same boundaries and transportation carried out by these means or by cable,
  - 6) ports of refuge, recreational ports, airports and generally those which do not carry out commercial activities,
  - 7) agriculture and livestock raising in accord with the general regulations,
  - 8) woodlands and forestry,
  - 9) activities in matters of environmental protection,
  - 10) water projects, canals, and irrigation systems of interest to the Autonomous Community and mineral and thermal waters,
  - 11) fishing in inland waters, hunting and river fishing
  - 12) interior fairs,
  - 13) promotion of the economic development of the Autonomous Community within the objectives marked by the national economic policy,
  - 14) handicrafts,
  - 15) museums, libraries, and conservatories of interest to the Autonomous Community,
  - 16) monuments of interest to the Autonomous Community,
  - 17) promotion of culture, research, and, when applicable, the teaching of the language of the Autonomous Community,
  - 18) promotion and regulation of tourism within its territorial area
  - 19) promotion of sports and adequate utilization of leisure,
  - 20) social assistance,
  - 21) health and hygiene, and
  - 22) the custody and protection of its buildings and installations, the coordination and other functions with respect to local police forces under the terms an organic law shall establish
- (2) After five years have elapsed and through the reform of its statutes the Autonomous Communities may then expand their competencies within the framework established in Article 149

**149. State Competencies**

(1) The State holds exclusive competence over the following matters

1) the regulation of the basic conditions which guarantee the equality of all Spaniards in the exercise of their rights and fulfillment of their constitutional duties,

2) nationality, immigration, emigration, alienage, and the right of asylum,

3) international relations,

4) defense and the Armed Forces,

5) administration of Justice,

6) mercantile, penal, and prison legislation, procedural legislation, without prejudice to the necessary specialties which in this order may derive from the particularities of the substantive law of the Autonomous Communities,

7) labour legislation, without prejudice to its execution by the organs of the Autonomous Communities,

8) civil legislation, without prejudice to the preservation, modification, and development by the Autonomous Communities of civil "fueros", or special rights, where they may exist, in any case, the rules relative to the application and effectiveness of legal norms, civil-legal relations having to do with the form of matrimony, regulation of registers and public instruments, the bases for contractual obligations, norms for resolving the conflicts of laws, and the determination of the sources of the law, in this last case, with respect to the norms of the "fueros" and special law,

9) legislation concerning intellectual and industrial property,

10) system of customs, tariffs, and foreign trade,

11) monetary system, foreign credits, exchange and convertibility, the general bases for the regulation of credit, banking, and insurance,

12) legislation on weights and measures, determination of the official time,

13) bases and coordination of general planning and economic activity,

14) general finance and debt of the State,

15) promotion and general coordination of scientific and technical research,

16) external health, bases and general coordination of health, legislation concerning pharmaceutical products,

17) basic legislation and economic system of social security, without prejudice to the execution of its services by the Autonomous Communities,

18) the bases of the legal system of the public administrations and the statutory system for its officials which shall in every case guarantee that the administered will receive a common treatment by them, a common

administrative procedure, without prejudice to the specialties deriving from the particular organization of the Autonomous Communities, legislation on forcible expropriation, basic legislation on contracts and administrative concessions, and the system of responsibility of all public administration,

19) maritime fishing, without prejudice to the competencies attributed to the Autonomous Communities in the regulation of the sector,

20) merchant marine and the ownership of ships, lighting of coasts and maritime signals, ports of general interest, airports of general interest, control of the air space, transit and transport, meteorological service and registration of aircraft,

21) railroads and land transport which crosses through the territory of more than one Autonomous Community, general communications system, traffic, and movement of motor vehicles, mail and telecommunications, aerial cables, submarine cables, and radio communication,

22) the legislation, regulation, and concession of water resources and projects when the waters run through more than one Autonomous Community and the authorization of electrical installations when their use affects another community or when the transport of energy goes beyond its territorial area,

23) basic legislation on environmental protection without prejudice to the faculties of the Autonomous Communities to establish additional standards of protection, basic legislation on woodlands, forestry projects and livestock trails,

24) public works of general interest or whose realization affects more than one Autonomous Community,

25) bases of the mining and energy system,

26) system of production, sale, possession, and use of arms and explosives,

27) basic norms of the system of press, radio, and television and, in general, of the other means of social communication, without prejudice to the faculties which in their development and execution belong to the Autonomous Communities,

28) protection of the cultural, artistic, and monument patrimony of Spain against exportation and exploitation, museums, libraries and archives belonging to the State without prejudice to their management by the Autonomous Communities,

29) public security, without prejudice to the possibility of the creation of police by the Autonomous Communities in the manner which may be established in the respective statutes within the framework of the provisions of the organic law,

30) regulations of the conditions for obtaining issuing approving

and standardizing academic and professional degrees and basic norms for carrying out Article 27 in order to guarantee compliance with the obligations of the public powers in this matter,

31) statistics for State purposes, and

32) authorization for the convocation of popular consultations via referendum

(2) Without prejudice to the competencies which the Autonomous Communities may assume, the State shall consider the service of culture a duty and essential attribute and shall facilitate cultural communication among the Autonomous Communities in agreement with them

(3) The matters not attributed expressly to the state by this Constitution belong to the Autonomous Communities by virtue of their respective statutes. Authority over matters not assumed by the Statutes of Autonomy shall belong to the state, whose norms shall prevail in case of conflict over those of the Autonomous Communities in everything which is not attributed to their exclusive competence. The law of the State shall in every case be supplementary to the law of the Autonomous Communities

#### **150 Granting and Retaining Authority**

(1) The Parliament, in matters within the competence of the State, may grant to all or one of the Autonomous Communities the authority to dictate for itself legislative norms within the framework of the principles, bases, and directives established by a State law. Without prejudice to the competence of the courts, within the framework of every law shall be established the method of control by the Parliament over these legislative norms of the Autonomous Communities

(2) The State may transfer or delegate to the Autonomous Communities by an organic law those faculties on matters within the competence of the State, which because of their own nature are susceptible to transference or delegation. The law shall in each case contain the pertinent transfer of financial means as well as the forms of control the State reserves for itself

(3) The State may dictate laws which establish the principles necessary to harmonize the normative provisions of the Autonomous Communities even in the case of matters attributed to their competence when the general interest so demands. It is up to the Parliament, by the absolute majority in each Chamber, to evaluate this necessity

#### **151. Immediate Autonomy**

(1) It shall not be necessary to wait for the five year period referred to in Article 148 (2) to elapse when the initiative for the autonomous process is agreed upon within the time limit specified in Article 143 (2), not only by the corresponding Provincial Deputations or inter-island bodies, but also by three-quarters of the Municipalities of each province concerned, representing at least the majority of the electorate of each one, and said initiative is ratified by means of a referendum by the affirmative vote of the absolute majority of the electors in each province, under the terms to be established by an organic

law

(2) In the case provided for in the foregoing paragraph, the procedure for drafting the statute shall be as follows

1) The Government shall summon all the Deputies and Senators elected in the electoral districts within the territorial area seeking self-government in order to constitute themselves into an Assembly for the sole purpose of drawing up the corresponding draft statute for self-government, to be adopted by the absolute majority of its members

2) Once the draft statute has been passed by the assembly, it shall be remitted to the Constitutional Commission of the House of Representatives which shall examine it within the time of two months with the concurrence and assistance of a delegation from the Assembly which has proposed it, in order to decide in common agreement upon its definitive formulation

3) If such an agreement is reached, the resulting text shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the proposed statute

4) If the draft statute is approved in each province by the majority of validly cast votes, it shall be referred to the Parliament Both Chambers, in plenary assembly, shall decide upon the text by means of a vote of ratification. Once the statute has been approved, the King shall sanction it and shall promulgate it as law

5) If the agreement referred to in sub-paragraph 2) is not reached, the draft statute shall be treated like a draft law in the Parliament. The text approved by them shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the draft statute. In the event that it is passed by the majority of the validly cast votes in each province, it shall be promulgated under the terms outlined in the foregoing sub-paragraph

(3) In the cases described in sub-paragraphs 4) and 5) of the foregoing paragraph, failure to pass the draft statute by one or several of the provinces shall not impede the constitution of the remaining provinces into an Autonomous Community in the form as shall be established by the organic law envisaged in paragraph (1)

## 152. Governing Council

(1) In the statutes passed by means of the procedure referred to in the foregoing Article, the institutional autonomous organization shall be based on a legislative assembly elected by universal suffrage in accordance with a system of proportional representation which assures, moreover, the representation of the various areas of the territory, a Governing Council with executive and administrative functions, and a president elected by the Assembly from among its members and appointed by the King to whom shall be responsible for directing the Governing Council, which constitutes the supreme representation of the respective Community as well as the State's ordinary

representation in the latter. The President and the members of the Governing Council shall be politically responsible before the Assembly. A High Court of Justice, without prejudice to the jurisdiction exercised by the Supreme Court, shall be at the head of the Judiciary within the territorial area of the Autonomous Community. The statutes of the Autonomous Communities shall establish the circumstances and manner in which they will participate in the organization of the judicial demarcations of the territory. All of this must be in conformity with the provisions of the organic law on judicial power and compatible with its unity and independence. Without prejudice to the provisions of Article 123, successive appeals shall, where applicable, be lodged with judicial bodies located in the same territory of the Autonomous Community as that in which the competent court of the first instance is located.

(2) Once the respective statutes have been sanctioned and promulgated, they may only be amended by means of the procedures established therein and through a referendum of the electors registered in the corresponding electoral rolls.

(3) By means of grouping the bordering municipalities together, the Statutes may establish their own territorial electoral districts, which will enjoy full legal personality.

### 153. Control

Control over the activity of the organs of the Autonomous Communities shall be exercised by

a) the Constitutional Court, in matters relative to the constitutionality of its normative provisions having the force of law,

b) the Government, after the handing down by the Council of State of its opinion, regarding the exercise of the delegated functions referred to in Article 150 (2),

c) the jurisdiction in administrative litigation, with regard to autonomous administration and its regulatory norms,

d) the Court of Accounts, with regard to economic and budgetary matters.

### 154. Government Delegate

A delegate appointed by the Government shall direct the administration of the State in the territorial area of each Autonomous Community and shall coordinate it, when necessary, with the Community's own administration.

### 155. Government Force

(1) If an Autonomous Community does not fulfill the obligations imposed upon it by the Constitution or other laws, or should act in a manner seriously prejudicing the general interest of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefor, may, following approval granted by an absolute majority of the Senate, adopt the means necessary in order to oblige the latter forcibly to meet said obligations, or in order to protect the above-

mentioned general interest

(2) With a view to implementing the measures provided for in the foregoing paragraph, the Government may give instructions to all the authorities of the Autonomous Communities

#### **156. Financial Autonomy**

(1) The Autonomous Communities shall enjoy financial autonomy for the development and exercise of their competencies, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards

(2) The Autonomous Communities may act as delegates or collaborators of the State for the collection, management, and settlement of the latter's tax resources, in conformity with the law and the statutes

#### **157. Tax Autonomy**

(1) The resources of the Autonomous Communities shall consist of

a) taxes wholly or partially assigned to them by statute, charges on State taxes, and other shares in State taxes

b) their own taxes, rates, and special levies,

c) transfers from an inter-territorial clearing fund and other allocations to be charged to the General State Budgets,

d) revenues accruing from their property and private law income,

e) the yield from credit operations

(2) The Autonomous Communities may under no circumstances adopt measures to raise taxes on property located outside their territory or likely to hinder the free movement of goods or services

(3) By means of an organic law, the exercise of the financial competencies enumerated in paragraph (1) may be regulated, the norms for settling the conflicts which may arise, and the possible forms of financial collaboration between the Autonomous Communities and the State

#### **158. State Allocation, Clearing Fund**

(1) In the General State Budgets, an allocation may be made to the Autonomous Communities in proportion to the volume of State services and State activities for which they have assumed responsibility and to their guarantee to provide a minimum level of basic public services throughout Spanish territory

(2) With the object of correcting inter-territorial economic imbalances and implementing the principle of solidarity a clearing fund shall be established for investment expenditure whose resources shall be distributed by the Parliament among the Autonomous Communities and the provinces as the case may be

## TITLE IX

### CONSTITUTIONAL COURT

#### 159. Composition

(1) The Constitutional Court is composed of twelve members appointed by the King. Of these, four shall be nominated by the House of Representatives by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority; two shall be nominated by the Government, and two by the General Council of the Judiciary.

(2) The members of the Constitutional Court shall be appointed from among Magistrates and Prosecutors university professors, public officials, and lawyers, all of whom must be jurists of acknowledged competence with a least fifteen years of professional experience.

(3) The members of the Constitutional Court shall be appointed for a period of nine years and shall be renewed by two-thirds every three years.

(4) The office of member of the Constitutional Court is incompatible with any representative function with a management role in a political party or trade union, or any employment in their service, with a career as Judge or Prosecutor, and with any professional or commercial activity whatsoever. In other cases, the incompatibilities relative to the judicial power shall also be applicable to the members of the Constitutional Court.

(5) The members of the Constitutional Court shall be independent and irremovable during their term of office.

#### 160. President

The President of the Constitutional Court shall be appointed by the King from among its members on the recommendation of the Plenum of the Court itself, for a period of three years

#### 161. Competencies

(1) The Constitutional Court has jurisdiction over the whole of Spanish territory and is competent to hear:

a) appeals on the grounds of unconstitutionality against laws and regulations having the force of law; a declaration of unconstitutionality of a legal rule with the status of law, interpreted by jurisprudence, shall also affect the latter, although an overturned sentence or sentences shall not lose the validity of a judgment;

b) appeals against violation of the rights and liberties referred to in Article 53 (2), in the cases and forms to be established by law;

c) conflicts of competence between the State and the Autonomous Communities or between the Autonomous Communities themselves;

d) other matters assigned to it by the Constitution or by organic laws

(2) The Government may contest before the Constitutional Court the provisions and resolutions adopted by the organs of the Autonomous

**Communities** The challenge shall produce the suspension of the contested provisions or resolution, but the Court must either ratify or lift the suspension, as the case may be, within a period of not more than five months

#### 162 Standing

(1) The following are eligible to

a) lodge an appeal of unconstitutionality the President of the Government, the Defender of the People, fifty Deputies, fifty Senators, the executive corporate bodies of the Self-Governing Communities and when applicable, their Assemblies

b) lodge an appeal any natural or legal person invoking a legitimate interest as well as the Defender of the People and the Office of the Public Prosecutor

(2) In all other cases, the organic law shall determine which persons and organs are eligible

#### 163. Constitutionality Review

If a judicial organ considers, in some action, that a regulation with the status of law which is applicable thereto and upon the validity of which the judgment depends, may be contrary to the Constitution it may bring the matter before the Constitutional Court in the cases, manner and with the consequences which the law establishes, which in no case shall be suspensive

#### 164. Effect of judgments

(1) The verdicts of the Constitutional Court shall be published in the Official State Gazette with the dissenting votes, if any. They have the validity of a judgment as from the day following their publication and no appeal may be brought against them. Those which declare the unconstitutionality of a law or of a norm with the force of law, and all those which are not limited to the subjective evaluation of a right, shall be fully binding on everybody

(2) Unless the verdict rules otherwise, that part of the law not affected by unconstitutionality shall remain in force

#### 165 Organizational Law

An organic law shall regulate the functioning of the Constitutional Court, the statutes of its members, the procedure to be followed before it and the conditions governing actions brought before it

### TITLE X

## CONSTITUTIONAL AMENDMENT

#### 166 Initiative

The right to propose a Constitutional amendment shall be exercised under the terms contained in Article 87 (1) and (2)

#### 167 Procedure

(1) Bills on Constitutional amendment must be approved by a majority

of three-fifths of the members of each Chamber. If there is no agreement between the Chambers, an effort to reach it shall be made by setting up a Joint Commission of Deputies and Senators which shall submit a text to be voted on by the House of Representatives and the Senate.

(2) If adoption is not obtained by means of the procedure outlined in the foregoing paragraph, and provided that the text has obtained a favourable vote by an absolute majority of the Senate, the House of Representatives may approve the amendment by a two-thirds vote.

(3) Once the amendment has been passed by the Parliament, it shall be submitted to a referendum for its ratification, if so requested by one-tenth of the members of either Chamber within fifteen days after its passage.

### **168. Revision**

(1) When a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Title, Chapter II, Section 1 of Title I, or Title II, the principle shall be approved by a two-thirds majority of the members of each Chamber, and the Parliament shall immediately be dissolved.

(2) The Chambers elected must ratify the decision and proceed to examine the new Constitutional text, which must be approved by a two-thirds majority of the members of both Chambers.

(3) Once the amendment has been passed by the Parliament, it shall be submitted to ratification by referendum.

### **169. Restriction**

A Constitutional amendment may not be initiated in time of war or when any of the states outlined in Article 116 are in operation.

## **TITLE XI**

### **ADDITIONAL PROVISIONS**

1. (1) The Constitution protects and respects the historic rights of the territories with "fueros".

(2) The general updating of the "fuero" system shall be carried out, when appropriate, within the framework of the Constitution and of the Statutes of Autonomy.

2. The declaration regarding coming of age contained in Article 12 shall not be prejudicial to the cases to which the "fuero" rights are applicable within the sphere of Private Law.

3. Any modification of the financial and tax system of the Canarian Archipelago shall require a previous report from the Autonomous Community or, as the case may be, from the provisional autonomous organ.

4. In those Autonomous Communities where more than one Territorial Court has its offices, the Statutes of Autonomy may maintain the existing Courts, distributing jurisdiction among them, provided this is done always in accordance with the provisions of the organic law on Judicial Power and in

conformity with its unity and independence

## **TITLE XII**

### **TRANSITIONAL PROVISIONS**

1. In the territories with a provisional regime of Autonomy, their higher collegiate organs may, by means of an agreement adopted by an absolute majority of their members, substitute for the initiative which, in Article 143 (2) is attributed to the Provincial Councils or corresponding inter-island organs

2. The territories which in the past have, by plebiscite, approved draft Statutes of Autonomy, and which, at the time of the promulgation of this Constitution, have provisional regimes of autonomy, may proceed immediately in the manner provided in Article 148 (2), when agreement thereon is reached by an absolute majority of their pre-autonomous higher collegiate organs, and the Government is duly informed. The draft statutes shall be drawn up in accordance with the provisions of Article 151 (2) when so requested by the pre-autonomous collegiate organ

3. The initiative of the process towards autonomy conferred on the local corporations or their members, which is contained in Article 43 (2), shall be postponed for all purposes until the first local elections have taken place, once the Constitution has come into effect

4. In the case of Navarra, and for the purposes of its incorporation into the General Basque Council or the Basque Autonomous Regime replacing it, instead of the provisions established by Article 143, the initiative shall lie with the competent "Foral" organ, which shall adopt its decision by a majority of the members comprising it. In order for this initiative to be valid, the decision of the competent "Foral" organ must also be ratified by a referendum expressly held for this purpose and passed by a majority of the valid votes cast. If the initiative does not succeed, it may only be repeated during a different term of office of the competent "Foral" organ and, in any case, only when the minimum period laid down in Article 143 has elapsed

5. The cities of Ceuta and Melilla may constitute themselves as Autonomous Communities if their respective Municipal Councils should so decide by means of an absolute majority of their members and if the Parliament thus authorizes, by means of an organic law, under the terms provided in Article 144.

6. When various draft statutes are referred to the Constitutional Commission of the House of Representatives, decisions regarding them shall be taken according to the order in which they are received. The two months' period referred to in Article 151 shall be counted from the moment that the Commission terminates its study of the draft or drafts that it has successively examined

7. The provisional autonomous organisms shall be considered dissolved in the following cases:

a) once the organs established in the Statutes of Autonomy approved

in conformity with the Constitution have been established,

b) in the event that the initiative of the autonomous process should not be successful on account of non-compliance with the requirements provided in Article 143,

c) if the organism has not exercised the right recognized in the first transitory provision within a period of three years

8. (1) Once the present Constitution has become effective, the Chambers which adopted it shall assume the functions and powers indicated therein for the House of Representatives and the Senate respectively, while under no circumstances shall their term of office continue beyond 15 June 1981

(2) With regard to the provisions established in Article 99, the promulgation of the Constitution shall be considered as creating the Constitutional basis for its subsequent application. To this end, there shall be a thirty-day period, as from the date of the promulgation, for implementing the provisions laid down in said Article

During this period, the current President of the Government, who shall assume the functions and competencies established by the Constitution for this office, may opt to utilize the authority conferred on him by Article 115 or, by means of resignation, leave the way open for application of the provisions established in Article 99. In the latter case, the situation relative to the President shall be that provided in Article 101 (2)

(3) In the case of dissolution, in accordance with the provisions of Article 115, and if the provisions contained in Articles 68 and 69 have not been enacted into law, the rules previously in force shall be applicable in the elections, with the sole exception of those provisions which refer to ineligibilities and incompatibilities, to which the provisions of Article 70 (1) b) shall be directly applicable, as well as its provisions concerning the voting age and those contained in Article 69 (3)

9. Three years after the election for the first time of the members of the Constitutional Court, lots shall be drawn for the designation of a group of four members of the same background as those who must retire and be replaced. For this purpose, the two members designated by the General Council of the Judicial Power shall be considered as coming from the same background. In the same manner, after three years have elapsed, the same procedure shall be carried out with regard to the two groups not affected by the previous drawing of lots. Thereafter, the provisions established in Article 159 (3) shall be applied

### ***TITLE XIII***

#### **REPEAL PROVISION**

1. (1) Law 1/1977, of 4 Jan, for political reform, is hereby repealed, as well as the following laws, in so far as they were not already repealed by the abovementioned law

— the Law of the Fundamental Principles of the Movement of 17 May 1958,

— the "Fuero" of the Spanish People of 17 July 1945,

— the "Fuero" of Labor of 9 March 1938,

— the Constitutive Law of the Parliament of 17 July 1942,

— the Law of Succession for the Headship of State of 26 July 1947,

— all of which as amended by the Organic Law of State of 10 Jan 1967, and under the same terms, last mentioned,

— the law of the National Referendum of 22 Oct 1948

(2) To the extent that it may still retain some validity, the Royal Decree of 25 Oct 1839 shall be definitively repealed in so far as it affects the provinces of Alava, Guipuzcoa, and Vizcaya

Under the same terms, the Law of 21 July 1876 shall be considered definitively repealed

(3) Likewise, any provisions contrary to those contained in the Constitution shall be repealed

#### *TITLE XIV*

#### **FINAL PROVISION**

1. This Constitution shall enter into force on the day of the publication of the official text in the Official State Gazette. It shall also be published in the other languages of Spain

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# 35

## CONSTITUTION OF SRI LANKA

Justice and Constitutional Affairs Minister Prof G L Peiris released 18 Chapters of the Draft Constitution of the Republic of Sri Lanka on March 27, 1997. Chapters released were Ch 1 through XIV and XVI through XIX. The Chapter XV that deals with "Devolution of Powers to Regions" was not included.

### PREAMBLE

Whereas it is the will of the people of Sri Lanka to establish and strengthen an order—

Wherein the sovereignty of the people is assured and the exercise of authority by their freely chosen representatives is in the nature of a sacred trust,

Wherein the principles of democracy, freedom, humanity, tolerance and equal opportunity shall be fully observed,

Wherein the dignity of the individual shall be upheld through the guaranteeing of human rights and fundamental freedoms and the rule of law,

Wherein the territories constituting the nation shall form one indissoluble union, the units whereof will be characterised by such boundaries and limitations on their powers and authority as may be prescribed,

Wherein the territorial integrity, independence and unity of the nation including its sovereign rights over land, sea and air shall be safeguarded,

Wherein peace and fraternity among all communities shall be secured and provision made enabling all communities to enjoy and nurture their distinct culture, practice and profess their own religion and promote their own language, thus preserving the rich cultural and ethnic diversity characteristic of a plural society,

Now, therefore, we the people of Sri Lanka having solemnly resolved to constitute Sri Lanka into a free, sovereign, united and independent Republic,

Cognisant of the sacrifices made by the people in the cause of sustaining the unity and sovereignty of the republic,

Mindful of our obligations to succeeding generations of Sri Lankans and the International Community,

Inspired by the vision of a Sri Lankan nation where all communities co-exist in equality, safety and contentment,

Conscious of the desire to achieve rapid, sustained and equitable development so that the people of Sri Lanka may prosper and attain their rightful place among the community of nations,

Do, on this (DAY) acting through our freely chosen representatives constituting the 10th Parliament of Sri Lanka established by us, hereby adopt, enact and give to ourselves

This CONSTITUTION as the SUPREME LAW of the REPUBLIC OF SRI LANKA

## CHAPTER I

### THE PEOPLE, THE STATE AND SOVEREIGNTY

1 Sri Lanka is a Sovereign Republic and shall be known as the Republic of Sri Lanka. The Republic of Sri Lanka shall be an indissoluble Union of Regions.

2. (1) The territory of the Republic shall consist of Regions, the names, boundaries and areas of which are set out in the First Schedule, the Capital Territory and its territorial waters

(2) No Regional Administration or Regional Administrations shall attempt, by direct or indirect means, to promote or otherwise advocate an initiative towards—

(a) The separation or secession of such Region or Regions from the Union of Regions constituting the Republic of Sri Lanka

(b) Alteration of the area of such Region or Regions

(c) Alteration of the boundaries of such Region or Regions

(d) Alteration of the name or names of such Region or Regions,

(e) Formation of a new Region by separation of territory from any Region or by uniting two or more Regions or parts of Regions or by uniting any territory with a part of any region

Provided that nothing in this paragraph shall be read and construed as prohibiting a Regional Administration from making representations to the Central Government regarding the matters referred to in sub paragraph (e) of this paragraph

3 In the Republic of Sri Lanka, sovereignty is in the People and is inalienable. Sovereignty includes the powers of Government fundamental rights and the franchise and shall be exercised and enjoyed in the following manner —

(a) The legislative power of the People shall be exercised by Parliament, Regional Councils and the People at a Referendum as hereinafter provided,

(b) The executive power of the People shall be exercised by the President of the Republic acting on the advice of the Prime Minister and the Cabinet of Ministers, and the Governors acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided,

(c) The judicial power of the people shall be exercised through courts, tribunals and institutions created and established, or recognised, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its members, wherein the judicial power of the people may also be exercised directly by Parliament according to law,

(d) The fundamental rights which are by the Constitution declared and recognised shall be respected, secured and advanced by all the organs of Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided, and

(e) The franchise shall be exercisable at the election of Members of Parliament, and of the members of Regional Councils, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors

4. The National Flag of the Republic of Sri Lanka shall be the Lion Flag depicted in the Third Schedule

5. The National Anthem of the Republic of Sri Lanka shall be "Sri Lanka Matha", the words and music of which are set out in the Fourth Schedule

6. The National Day of the Republic of Sri Lanka shall be the fourth day of February

## CHAPTER II

### BUDDHISM

7. (1) The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster the Buddha Sasana, while guaranteeing to all religions the rights granted by Articles 15 (1) and 15 (3)

(2) The State shall consult the Supreme Council in all matters pertaining to the protection and fostering of the Buddha Sasana

(3) For the purpose of this Article "Supreme Council" means a Council established by law in consultation with the Maha Sangha

### CHAPTER III

#### FUNDAMENTAL RIGHTS AND FREEDOMS

##### 8 Inherent right to life

Every person has an inherent right to life and no person shall be intentionally or arbitrarily deprived of his life

##### 9. Freedom from torture or cruel, inhuman or degrading treatment

(1) No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

(2) No restriction shall be placed on the right declared and recognised by this Article

##### 10 Freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation

(1) No person shall be imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law

(2) No person shall be arrested except by an authorised officer acting in accordance with procedure prescribed by law under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court

Provided that any person authorised so to do by any law may, in the manner, and in the circumstances, prescribed by law, arrest any person without such a warrant

(3) Any person arrested shall at the time of arrest be informed, in a language which he appears to understand, of the reason for his arrest and of his rights under paragraphs (4) and (5) of this Article

Provided that such person, if he so requests, shall be informed in writing of the reasons of his arrest within a reasonable time

(4) Any person arrested shall have the right to communicate with any relative or friend of his choice, and, if he so requests, such person shall be afforded means of communicating with such relative or friend

(5) Any person arrested shall have the right to consult and retain an Attorney-at-law shall be afforded all reasonable facilities by the State

(6) Any person arrested shall not be detained in custody or confined for a longer period than under all the circumstances of the case is reasonable, and shall, in every case be brought before the judge of a competent court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to such judge, and no person shall be detained in custody beyond such period except upon, and in terms of the order of such judge

(7) (a) Any person detained in custody or confined who is entitled, under the provisions of any law, to be released on bail or on his executing a bond shall be so released

(b) The amount of bail and the amount of every such bond shall be fixed with due regard to the circumstances of the case and shall not be excessive

(8) Any person suspected of committing an offence shall be charged or indicted or released, without unreasonable delay

(9) Any person charged with an offence shall be entitled to be heard in person or by any Attorney-at-Law of his own choosing and shall be so informed by the Judge.

(10) Any person charged with an offence shall be entitled to be tried---

- (a) without undue delay,
- (b) at a fair trial,
- (c) by a competent court,
- (d) at a public hearing

Provided that a Judge may, in his discretion, whenever he considers it necessary, in proceedings relating to sexual matters, or where the interests of juveniles so require, or in the interests of national security or public order necessary in a democratic society or in the interests of order and security within the precincts of such court, exclude therefrom such persons as are not directly interested in the proceedings

(11) Every person shall be presumed innocent until he is proved guilty

Provided that burden of proving particular facts may, by law, be placed on the accused

(12) No person shall be compelled to testify against himself or to confess guilt

(13) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed for any offence more severe than the penalty in force at the time when such offence was committed

Provided that nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations

(14) Any person who has once been tried by a competent court for an offence and convicted or acquitted of such offence shall not be liable to be tried for the same offence

(15) No person shall be punished with death or imprisonment except by order of a competent court in accordance with law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial shall, if not unreasonable having regard to the circumstances, not constitute punishment

Provided that the arrest, holding in custody, detention or other deprivation of personal liberty of a person, by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act or the Indo-Ceylon Agreement Implementation Act No 14 of

1967 or other such law as may be enacted in substitution therefor, shall not be a contravention of this Article

(16) All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person

(17) No restriction shall be placed on the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or for the purpose of securing due recognition and respect for the rights and freedoms of others

### 11. Right to equality

(1) All persons are equal before the law and are entitled to the equal protection of the law

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political or other opinion, place of birth or any one of such grounds

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any national language as a qualification for employment or office in the Public Service, Judicial Service, Regional Public Service or Local Government service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of such employment or office

Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language

(3) No person shall on the grounds of race, religion, language, caste, sex, political or other opinion, place of birth or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion

(4) Nothing in this Article shall prevent special measures being taken by law, subordinate legislation or executive action where necessary for the sole purpose of the protection or advancement of disadvantaged or underprivileged individuals or groups including those that are disadvantaged or underprivileged because of race, sex, age or mental or physical disability

(5) No restriction shall be placed on the exercise of the rights declared and recognised by this article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or the protection of public health or for the purpose of securing due recognition and respect for the rights and freedoms of others

### 12. Freedom of movement

(1) Every person lawfully resident within Sri Lanka is entitled to the freedom of movement within Sri Lanka and of choosing his residence within Sri Lanka

(2) Every person shall be free to leave Sri Lanka

(3) No restrictions shall be placed on the exercise of the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security or public order or national economy or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others

### **13. Freedom to return to Sri Lanka**

Every citizen shall be entitled to return to Sri Lanka

### **14. Right to private and family life**

(1) Every person has the right to respect his private and family life, his home and his correspondence and communications and shall not be subjected to unlawful attacks on his honour and reputation

(2) No restrictions shall be placed on the exercise of the right declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or national economy or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others

### **15. Freedom of thought, conscience and religion**

(1) Every person is entitled to freedom of thought, conscience and religion including the freedom to have or to adopt a religion or belief of his choice

(2) No restrictions shall be placed on the rights declared and recognised by paragraph (1) of this Article

(3) Every person is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching

(4) No restrictions shall be placed on the rights declared and recognised by paragraph (3) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, or for securing due recognition and respect for the rights and freedoms of others

### **16. Freedom of speech and expression including publication and freedom of information**

(1) Every person is entitled to the freedom of speech and expression including publication. This right shall include the freedom to hold opinions and to receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium

(2) No restrictions shall be placed on the right declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, the protection of public health or morality, racial and religious harmony or in

relation to parliamentary privilege, contempt of court, defamation or incitement of an offence or for securing due recognition and respect for the rights and freedoms of others

#### **17. Freedom of peaceful assembly**

(1) Every person is entitled to the freedom of peaceful assembly

(2) No restrictions shall be placed on the exercise of the right declared and recognised by this Article other than such restrictions prescribed by or under any law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, the protection of public health or for the purpose of securing the due recognition and respect for the rights and freedoms of others

#### **18. Freedom of Association**

(1) Every person is entitled to the freedom of association

(2) Every citizen is entitled to the freedom to form and join a trade union

(3) No restrictions shall be placed on the exercise of the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, national economy or for securing due recognition and respect for the rights and freedoms of others

#### **19. Right to enjoy and promote culture and use of language**

(1) Every citizen is entitled by himself or in association with others to enjoy and promote his own culture and to use his own language

(2) No restriction shall be placed on the exercise of the right declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others

#### **20. Freedom to engage in any lawful trade, occupation, profession, business or enterprise**

(1) Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.

(2) No restriction shall be placed on the exercise of the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of the national economy, national security, public order, protection of public health or morality, the environment or for securing due recognition and respect for the rights and freedoms of others or in relation to—

(a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade business or enterprise, and the licensing and disciplinary control of the person entitled to such fundamental right, and

(b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise, whether to the exclusion, complete or partial, of citizens or otherwise

## **21. Right to own property**

(1) Every citizen is entitled to own property alone or in association with others

(2) No person shall be deprived of his property except according to procedure established by law. No property shall be compulsorily acquired or requisitioned save for a public purpose or for reasons of public utility or public order and save by authority of a law which provides for the payment of fair compensation

## **22. Operation of certain fundamental rights in their application to armed forces to be subject to restrictions prescribed by law**

The exercise and operation of the fundamental rights declared and recognised by Article 10, 11, 12, 14, 15(3), 16, 17 and 18 shall in their application to the armed forces, the police force and other forces charged with the maintenance of public order be subject to such restrictions as may be prescribed by or under any law in the interests of the proper discharge of their duties and the maintenance of discipline among them

## **23. Derogation in times of public emergency**

(1) In time of public emergency the existence of which is duly proclaimed, subject to paragraphs (2) and (3), measures may be prescribed by law derogating from the exercise and operation of the fundamental rights declared and recognised in this Chapter to the extent strictly required by the exigencies of the situation and necessary in a democratic society, provided that such measures do not involve discrimination solely on the grounds of race, class, religion, gender, language, caste, national or social origin. For the purpose of this Article "law" includes regulations made under the law for the time being in force relating to public security

(2) There shall be no derogation from any of the rights declared and recognised by Articles 8, 9, 10(1), 10(2), 10(10), 12, 13 and 15

(3) There shall be no derogation from the right declared and recognised by Article 10 (6) unless at the same time legal provision is made requiring—

(i) A Magistrate having jurisdiction to be promptly informed of the arrest, and

(ii) The person arrested to be produced before such Magistrate within such time as is reasonable in all the circumstances of the case

## **24. Existing written law and unwritten law**

All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the provisions of this Chapter

**25. Subjection on a Court order not to be a contravention**

The subjection of any person on the order of a court to any form of punishment recognised by any written law shall not be a contravention of the provisions of this Chapter

**26 Remedy for the infringement of fundamental rights by State action**

Every person shall be entitled to apply to the Supreme Court as provided by Article 168 in respect of the infringement or imminent infringement, by State action, including executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter, or by judicial action by courts exercising original criminal jurisdiction, of a fundamental right to which such person is entitled under Article 10

Provided that where the person aggrieved is unable or incapable of making an application under Article 168 by reason of physical, social or economic disability or other reasonable cause, and application may be made on behalf of such a person, by any relative or friend of such person if the person aggrieved, raises no objection to such application

Provided further that an application under this Article may be made, in the public interest, on behalf of any person or persons aggrieved, by any other person or by any incorporated or unincorporated body of persons

## **CHAPTER IV LANGUAGE**

**27. Official languages**

The Official languages of Sri Lanka shall be Sinhala and Tamil

**28. National languages**

The national languages of Sri Lanka shall be Sinhala, Tamil and English

**29. Use of languages in Parliament and Country**

A member of Parliament or a member of a Regional Council or a member of a local authority shall be entitled to perform his duties and discharge his functions in Parliament or in such Regional Council or local authority in any of the National Languages

**30. Languages of administration**

(1) Sinhala and Tamil shall be the languages of administration throughout Sri Lanka

(2) Sinhala shall be the language used for the maintenance of public records by public institutions, Regional Councils and local authorities in all the Regions of Sri Lanka other than the Northern and Eastern Regions where Tamil shall be used

(3) Sinhala and Tamil shall be used as the languages for the maintenance of public records by public institutions, Regional Councils or local authorities in any area comprising a division of a divisional secretary where the Sinhala or

Tamil linguistic minority, as the case may be, in such area exceeds one fifth of the total population of that area

(4) In any area where Sinhala is used as a language for the maintenance of public records, a person shall be entitled—

(a) to receive communication from and to communicate and transact business with, any official in his official capacity, in either Tamil or English and to receive a response to such communication from such official in the language in which he communicated,

(b) if the law recognises his right to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document, or a translation thereof, as the case may be, in either Tamil or English,

(c) where a document is executed by an official for the purpose of being issued to him, to obtain such document or a translation thereof, in either Tamil or English,

(d) to give information as regards any birth, death or marriage or with regard to the commission of an offence to a Police or peace officer in either Tamil or English

### 31. Rights in Tamil speaking areas

In any area where Tamil is used as a language for the maintenance of public records, a person shall be entitled to exercise the rights and to obtain the services referred to in sub-paragraphs (a), (b), (c) and (d) of paragraph (4) of Article 30 in Sinhala or English

### 32. Rights of Regional Councils

A Regional Council or local authority which conducts its business in Sinhala shall be entitled to receive communications from and to communicate and transact business with any official, in his official capacity, in Sinhala, and a Regional Council or a local authority which conducts its business in Tamil shall be entitled to receive communications from and to communicate and transact business with, any official in his official capacity, in Tamil

Provided, however, that a Regional Council, local authority, public institution or any official receiving communications from or transacting business with any other Regional Council, local authority, public institution or any official functioning in an area in which a different language is used as the language of administration shall be entitled to receive communications from and to communicate and transact business in English

### 33. Language of examinations

A person shall be entitled to be examined through the medium of either Sinhala or Tamil or English at any examination for the admission of persons to the Public Service, Judicial Service, Regional Public Service, Local Government Service or any public institution, subject to the condition that he may be required to acquire a sufficient knowledge of Tamil or Sinhala, as the case may

be, within a reasonable time after admission to such service or public institution where such knowledge is reasonably necessary for the discharge of his duties

Provided that a person may be required to have a sufficient knowledge of Sinhala or Tamil or English as a condition for admission to any such service or public institution where no function of the office or employment for which he is recruited can be discharged otherwise than with a sufficient knowledge of such language

#### **34. Language of legislation**

All laws and subordinate legislation shall be enacted in Sinhala, Tamil and English

In the event of any inconsistency between such texts, each text shall be regarded as equally authoritative unless parliament shall otherwise provide at the stage of enactment of any law

#### **35. Subordinate legislation**

All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law other than by a Regional Council or a local authority, and the Gazette shall be published in Sinhala, Tamil and English

#### **36. Subordinate legislation by Regional Council or Local Authorities**

All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law by a Regional Council or a local authority, and all documents, including circulars and forms issued by any such body or any public institution shall be published in the language used as the language of record in the respective areas in which they function, together with a translation thereof in English

#### **37. Laws and subordinate legislation already in force**

All laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the Gazette in Sinhala and Tamil as expeditiously as possible

#### **38. Language of Courts**

Sinhala and Tamil shall be the language of the courts throughout Sri Lanka

#### **39. Language of record and proceedings in Courts**

Sinhala shall be used as the language of the record and proceedings in courts situated in all the areas of Sri Lanka except in the Northern and Eastern Regions. In the event of any appeal from any court, the record shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred

Provided that the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers direct that the record of any court shall also be maintained and the proceedings conducted in a national language other than the language of the court

#### **40. Initiating proceedings in Courts**

Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings and submit to court pleadings and other documents, and participate in the proceedings in court in Sinhala, Tamil or English

#### **41. Providing interpretations and translations in proceedings**

Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is now conversant with the language used in a court shall be entitled to be provided by the State with interpretation and to translation into Sinhala, Tamil or English, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in such language any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law

#### **42. Permitting the use of English**

The Minister in charge of the subject of Justice may with the concurrence of the Cabinet of Ministers, issue directions permitting the use of English in or in relation to the records and proceedings in any court for all purposes or for such purposes as may be specified therein Every judge shall be bound to implement such directions

Provided that every judge may at the request of the parties to any proceedings use English in relation to the records and proceedings where the use of such language would facilitate the expeditious conclusion of such proceedings.

#### **43. Medium of instruction**

A person shall be entitled to be educated through the medium of either Sinhala or Tamil and if facilities are available, through the medium of English

#### **44. Right to education in any national language**

A person shall be entitled to be instructed in any course, department or faculty of any university in any national language of his choosing if instruction in such language at such University is reasonably practicable

#### **45. Use of one national language where medium of instruction is another national language**

Where one national language is a medium of instruction for or in any course, department or faculty of any University directly or indirectly financed by the State, the other national languages shall also be made media of instruction for or in such course, department or faculty for students who prior to their admission to such University, were educated through the medium of such other national language

Provided that compliance with the preceding provisions of this paragraph shall not be obligatory if such other national language is the medium of instruction for or in any like course, department or faculty either at any other campus or branch of such University or of any other like University

#### 46. Facilities for the use of languages

The State shall provide adequate facilities for the use of the languages provided for in this Chapter

#### 47. This Chapter to prevail in the event of inconsistency

In the event of any inconsistency between the provisions of any law and the provisions of this Chapter, the provisions of this Chapter shall prevail

#### 48. Interpretation

In this Chapter—

"court" means any court or tribunal created and established for the administration of justice including the adjudication and settlement of industrial and other disputes or any other tribunal or institution exercising judicial or quasi-judicial functions or any tribunal or institution created and established for the conciliation and settlement of disputes

"judge" includes the President, Chairman, presiding officer and a member of any court,

"official" means the President, any Minister, Deputy Minister, Governor, Chief Minister or Minister of the Board of Ministers of a region, or any officer of a public institution, local authority or Regional Council,

"public institution" means a department or institution of the government, a public corporation or statutory institution,

"record" includes pleadings, judgements orders and other judicial and ministerial acts, and

"university" includes any institution of higher education

### CHAPTER V CITIZENSHIP

#### 49. Citizenship of Sri Lanka

(1) There shall be one status of citizenship known as "the status of a citizen of Sri Lanka"

(2) A citizen of Sri Lanka shall for all purposes be described only as a "citizen of Sri Lanka", whether such person became entitled to citizenship by descent or by virtue of registration in accordance with the law relating to citizenship or by the operation of any law

(3) No distinction shall be drawn between citizens of Sri Lanka for any purpose by reference to the mode of acquisition of such status as to whether acquired by descent or by virtue of registration or by the operation of any law

(4) No citizen of Sri Lanka shall be deprived of his status of a citizen of Sri Lanka, except under and by virtue of the provisions of sections 19, 20, 21 and 22 of the Citizenship Act.

Provided that the provisions of sections 23 and 24 of that Act shall also be applicable to a person who became entitled to the status of a citizen of Sri Lanka by virtue of registration under the provisions of section 11, 12 or 13 of that Act.

(5) Every person who immediately prior to the commencement of the Constitution was a citizen of Sri Lanka, whether by descent or by virtue of registration in accordance with any law relating to citizenship or by the operation of any law, shall be entitled to the status and to the rights of a citizen of Sri Lanka as provided in the preceding provisions of this Article

(6) The provisions of all existing written law relating to citizenship and all other existing written laws wherein reference is made to citizenship shall be read subject to the preceding provisions of this article

## CHAPTER VI

### DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

#### 50. Directive Principles of State Policy

The following principles shall guide the state in making laws and the governance of Sri Lanka—

(a) The State shall strengthen national unity recognising the plural and multi-ethnic character of Sri Lankan society and by promoting co-operation and mutual trust, confidence and understanding among all sections of the people of Sri Lanka

(b) The State shall assist the development of the cultures and languages of the people

(c) The State shall safeguard and strengthen the democratic structure of Government and the democratic rights of the people

(d) The State shall establish a just, equitable and moral social order the objectives of which include—

(i) the full realisation of the fundamental rights and freedoms of all persons,

(ii) securing and protecting effectively a social order in which social, economic and political justice shall inform all institutions of national life,

(iii) the elimination of economic and social privileges, disparity and exploitation,

(iv) the equitable distribution of the material resources of the community and the social product,

(v) the realisation of an adequate standard of living for all citizens and their families including adequate food, clothing, housing and medical care,

(vi) ensuring social security and welfare.

(vii) raising the moral, cultural and educational standards of the people and facilitating the full development of the human personality.

(viii) the creation of the necessary economic and social environment to enable people of all religious faiths to make a living reality of their religious principles

(c) The State shall develop the whole country by means of appropriate public and private economic activity

(f) The State shall protect and preserve and improve the environment and safeguard the reefs, shores, forests, lakes, watercourses and wildlife of Sri Lanka

(g) The State shall protect and preserve every monument or place or object of artistic or historic interest declared by or under law to be of national importance

(h) The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order, and shall respect, and foster respect for, international law and treaty obligations in dealings with and among nations

(i) The State shall strengthen, respect and foster respect for, international instruments relating to human rights and humanitarian law to which Sri Lanka is a signatory

### 51. Fundamental duties

It shall be the duty of every citizen to—

(a) uphold and protect the sovereignty, unity and integrity of Sri Lanka,

(b) uphold and defend the Constitution and its ideals and institutions,

(c) foster national unity and promote harmony amongst all the people of Sri Lanka,

(d) respect the rights and freedoms of others

(e) value and preserve the rich heritage of our composite culture,

(f) protect and improve the environment and conserve its riches,

(g) safeguard and preserve artistic or historical objects and places of national importance,

(h) safeguard and protect public property and combat its waste or misuse,

(i) refrain from directly or indirectly participating in bribery or corruption,

(j) uphold the rule of law and abjure violence,

(k) work conscientiously in a person's chosen occupation

**52. Principles of State Policy and Fundamental duties not justifiable**

(1) The provisions of this Chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.

(2) In this Chapter, the expression "State" includes a regional administration and a Regional Council.

**CHAPTER VII**

**THE CENTRAL EXECUTIVE—  
THE PRESIDENT OF THE REPUBLIC**

**53. President of the Republic**

There shall be a President of the Republic of Sri Lanka, who is the Head of the State, and the Commander-in-Chief of the Armed Forces.

**54. Election of President**

(1) Subject to the provisions of the Constitution, any citizen who is qualified as an elector may be elected by Parliament to the office of President of the Republic of Sri Lanka, in accordance with the provisions of paragraph (3) of this Article and with such procedure as may be provided for by law or standing orders, and by at least two-thirds of the whole number of members of Parliament (including those not present) voting in his favour, and the person so elected shall assume office as President of the Republic of Sri Lanka upon his taking the following oath or making the following affirmation before the Chief Justice or, in the absence of the Chief Justice, any other Judge of the Supreme Court:

"I, \_\_\_\_\_, do solemnly declare and affirm/swear that I will be faithful and bear true allegiance to the Republic of Sri Lanka, that I will uphold the Constitution of Sri Lanka and shall faithfully perform the duties and functions of the office of President of the Republic of Sri Lanka in accordance with the Constitution and with the law."

(2) Upon the assumption of office, the President shall cease to hold any other office created or recognised by the Constitution and if he is a member of Parliament or a Regional Council shall vacate his seat in Parliament or Regional Council, as the case may be. The President shall not hold any other office or place of profit whatsoever.

(3) The election of the President shall, whenever such election is contested, be according to the principle of the single transferable vote and Parliament shall by law or Standing Orders provide for all matters relating to the procedure for the election of the President by Parliament and all other matters necessary or incidental thereto.

**55. Powers of President**

In addition to the powers and functions expressly conferred on or assigned to him by the Constitution or by any written law, the President shall have the power—

(a) to make the statement of Government policy in Parliament at the commencement of each session of Parliament,

(b) to preside at ceremonial sittings of Parliament,

(c) to summon, prorogue and dissolve Parliament,

(d) to appoint the Prime Minister, the other Ministers of the Cabinet and Deputy Ministers, and Governors of Regions,

(e) to receive and recognise, appoint and accredit Ambassadors, High Commissioners, Plenipotentiaries and other diplomatic agents,

(f) to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the Acts of Appointment of the Prime Minister and other Ministers of the Cabinet, the Governors of Regions, the Chief Justice and other Judges of the Supreme Court, the Court of Appeal and the Regional High Court, such grants and dispositions of lands and immovable property vested in the Republic as he is by law required or empowered to do, and to use the Public Seal for sealing all things whatsoever that shall pass that Seal,

(g) to declare war and peace,

(h) to appoint as President's Counsel, Attorneys-at-Law who have reached eminence in the profession and have maintained high standards of conduct and professional rectitude,

(i) to declare a state of emergency within a Region and to dissolve a Regional Council, in accordance with the provisions of the Constitution, and

(j) to do all such acts and things, not being inconsistent with the provision of the Constitution or written law as by international law, custom or usage he is required or authorised to do

**56 Grant of Pardon**

(1) The President may in the case of any offender, convicted of any offence in any court within the Republic of Sri Lanka—

(a) grant a pardon either free or subject to lawful conditions,

(b) grant any respite, either indefinite or for such period as the President may think fit, of the execution of any sentence passed on such offender

(c) substitute a less severe form of punishment for any punishment imposed on any such offender,

(d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence

Provided that where any offender shall have been condemned to suffer death by the sentence of any court, the President shall cause a report to be made to him by the Judge who tried the case and shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General's advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President

(2) The President may in the case of any person who is or has become subject to any disqualification specified in any law relating to the election of members of Parliament—

- (a) grant a pardon, either free or subject to lawful conditions, or
- (b) reduce the period of such disqualification

### **57. Immunity of President from suit**

While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him in his official capacity

### **58. Salary, Allowances and Pension of the President**

(1) Parliament shall by resolution determine the salary, allowances and pension entitlement of the holders of the office of President. Such pension shall be in addition to any other pension to which such person is entitled by virtue of any prior service

(2) The salary, allowances and pension of the President shall be charged on the Consolidated Fund

(3) Parliament may by resolution increase, but shall not reduce, the salary, allowances or pension entitlement of the holder of the office of President

### **59. Term of Office and Vacation of Office by President**

(1) Subject to the provisions of paragraph (2) of this Article, the President shall hold office for period of five years

Provided that, notwithstanding the expiration of this period, the President shall remain in office until the next President assumes office

(2) No person who has been twice elected to the Office of President by Parliament shall be qualified thereafter to be elected to such office by Parliament

(3) The Office of President of the Republic of Sri Lanka shall become vacant—

- (a) upon the death of the President, or
- (b) on the President resigning his office by a writing addressed to the Speaker, or
- (c) on a unanimous decision by a committee consisting of the Speaker, Prime Minister and Leader of the Opposition that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity, or

(d) on Parliament passing by at least two-thirds of the whole number of members of Parliament (including those not present) voting in its favour a resolution of no-confidence against the President, introduced by any member by a written notice, addressed to the Speaker and signed by such member and by at least half the total number of members of Parliament

#### **60 President to act on the advice of the Prime Minister**

(1) The President shall always, except on the appointment of the Prime Minister and as otherwise required by the Constitution, act on the advice of the Prime Minister, or of such other Minister to whom the Prime Minister may have given authority to advise the President on any particular function assigned to that Minister

(2) No institution administering justice and likewise no other institution, person or authority shall have the power or jurisdiction to inquire into, pronounce upon or in any manner call in question any act or omission on the part of the President on the ground that the provisions of paragraph (1) of this Article have not been complied with

#### **61 Temporary Vacation of Office of President**

(1) Whenever the President is prevented by illness or any other cause from performing the duties of his office, or is absent from Sri Lanka, or during any period in which the office of President of the Republic of Sri Lanka is otherwise vacant, the Chief Justice shall act in the office of the President of the Republic of Sri Lanka unless another person is elected by Parliament to act in such office, such person shall before assuming office, take the oath in the form and manner prescribed in Article 54

(2) Any person acting in the office of the President of the Republic of Sri Lanka shall not continue to act after the President or some other person having a prior right to act in such office has notified that he has assumed or is about to assume or resume such office

(3) The provisions of the Constitution relating to the President shall apply, in so far as they can be applied to an acting President

### **CHAPTER VIII**

#### **THE CENTRAL EXECUTIVE —**

#### **THE PRESIDENT AND THE CABINET OF MINISTERS**

#### **62. Responsibility of the President**

The President shall be responsible to Parliament for the due execution and performance of the powers and functions of his office under the Constitution and under any other law, including the law for the time being relating to public security

**63. Cabinet of Ministers**

(1) There shall be a Cabinet of Ministers charged with the direction and control of the matters for which they are responsible and shall be collectively responsible to Parliament on all such matters

(2) Of the Ministers, one who shall be the Head of the Cabinet of Ministers shall be the Prime Minister. The President shall appoint as Prime Minister the Member of Parliament who, in the President's opinion, is most likely to command the confidence of Parliament and such member shall assume office as Prime Minister upon taking the following oath or making the following affirmation

"I, . . . , do solemnly declare and affirm/swear that I will be faithful and bear true allegiance to the Republic of Sri Lanka and that I will uphold the Constitution of Sri Lanka and shall faithfully perform the duties and functions of the Office of Prime Minister in accordance with the Constitution and with the law

**64. Appointment of a Prime Minister on the death or resignation of a Prime Minister**

Subject to the provisions of Article 63, upon the death or the resignation of the Prime Minister, or where the Prime Minister is deemed to have resigned, the President shall appoint a Prime Minister, who shall assume office as Prime Minister upon taking the oath or making the affirmation as referred to in Article 63

**65. Ministers of Cabinet and their subjects and functions**

(1) The Prime Minister shall determine the number of Ministers and Ministries and the assignment of subjects and functions to Ministers

(2) The President shall, on the advice of the Prime Minister, appoint from among the members of Parliament Ministers to be in charge of the Ministries so determined

(3) The Prime Minister may at any time change the assignment of subjects and functions and recommend to the President changes in the composition of the Cabinet of Ministers. Such changes shall not affect the continuity of the Cabinet of Ministers, including the continuity of its responsibility to Parliament

**66. Deputy Ministers**

(1) The President may, on the advice of the Prime Minister, appoint from among the Members of Parliament, Deputy Ministers to assist the Ministers in the performance of their duties pertaining to Parliament and to their departments and to exercise and perform such powers and duties of the Ministers under written law as may be delegated to such Deputy Ministers under paragraph (2) of this Article

(2) A Minister may, by notification published in the Gazette, delegate to his Deputy Minister any of the powers or duties conferred or imposed on the Minister by any written law, and it shall be lawful for the Deputy Minister to

exercise or perform any power or duty delegated to him under this paragraph notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on the Minister

#### **67 Tenure of office of the Ministers and Deputy Ministers**

A Minister or a Deputy Minister shall continue to hold office throughout the period during which the Cabinet of Ministers continues to function under the provisions of the Constitution unless he—

- (a) is removed by a writing under the hand of the President, or
- (b) resigns his office by a writing under his hand addressed to the President, or
- (c) save in the circumstances set out in Article 68 ceases to be a Member of Parliament

#### **68 Cabinet of Ministers after dissolution of Parliament**

The Cabinet of Ministers functioning immediately prior to the dissolution of Parliament shall, notwithstanding such dissolution, continue to function during the period intervening between dissolution and the conclusion of the General Election

#### **69. Dissolution of the Cabinet of Ministers**

(1) On the death or resignation of the Prime Minister or when the Prime Minister is deemed to have resigned, the Cabinet of Ministers shall stand dissolved and the other Ministers shall cease to hold office

(2) The provisions of paragraph (1) of this Article shall not operate if the death or resignation of the Prime Minister occurs in the period referred to in Article 68 and in that event, the Cabinet of Ministers shall continue to function with the other Ministers as its members until the expiration of that period. The President shall appoint one from among such Ministers to be the Prime Minister

(3) If on the death or resignation of the Prime Minister in the period referred to in Article 68 there is no other Minister, the President shall exercise and perform the powers and functions of the Cabinet of Ministers functioning under Article 68 until the conclusion of the General Election

#### **70 Resignation of the Prime Minister**

The Prime Minister shall be deemed to have resigned—

- (a) at the conclusion of a General Election, or
- (b) if Parliament rejects the Appropriation Bill or the Statement of Government Policy or Parliament passes a vote of no-confidence in the Government

#### **71. Acting Ministers and Acting Deputy Ministers**

Whenever a Minister or a Deputy Minister is unable to perform the functions of his office, the President may appoint any Member of Parliament to act in place of such Ministers or Deputy Minister

**72. Secretary to the Cabinet of Ministers**

There shall be a Secretary to the Cabinet of Ministers who shall be appointed by the President. The Secretary shall, subject to the directions of the Prime Minister, have charge of the office of the Cabinet of Ministers, and shall discharge and perform such other duties and functions as may be assigned to him by the Prime Minister or the Cabinet of Ministers.

**73. Secretaries to Ministries**

(1) There shall be for each Ministry a Secretary who shall be appointed by the President.

(2) The Secretary to a Ministry shall, subject to the direction and control of his Minister, exercise supervision over the departments of Government or other institutions in the charge of his Minister.

(3) For the purpose of this Article the Office of the Secretary General of Parliament, the Elections Commissioner, the Elections Commission, the Department of the Auditor-General, the Office of the Secretary to the Cabinet of Ministers, the office of the Parliamentary Commissioner for Administration (Ombudsman) and the Office of the Commission to Investigate Allegations of Bribery or Corruption shall be deemed not to be departments of Government.

(4) The President may transfer any Secretary to a Ministry to any other post in the Public Service.

**74. Official Oath**

No person appointed to any office referred to in this Chapter shall enter upon the duties of his office unless he takes or makes the special oath or affirmation prescribed for his office or where no such oath or affirmation is prescribed, the oath or affirmation set out in Schedule

**CHAPTER IX****THE CENTRAL LEGISLATURE—PARLIAMENT****75. Parliament**

(1) There shall be a Parliament which shall consist of 196 members elected by the electors of the several electoral districts constituted in accordance with the provisions of the Constitution, and 29 members elected in accordance with Article 112.

(2) Unless Parliament is sooner dissolved, every Parliament shall continue for six years from the date appointed for its first meeting and no longer, and the expiry of the said period of six years shall operate a dissolution of Parliament.

**76. Official Oath**

Except for the purpose of electing the Speaker, no Member shall sit or vote in Parliament until he has taken and subscribed the following oath, or made and subscribed the following affirmation, before Parliament—

"I do solemnly declare and affirm-swear that I will uphold and defend the Constitution of the Republic of Sri Lanka "

# **77. Speaker, Deputy Speaker and Deputy Chairman of Committees**

(1) Parliament shall, at its first meeting after a General Election, elect three Members to be respectively the Speaker, the Deputy Speaker and Chairman of Committees (hereinafter referred to as the "Deputy Speaker") and the Deputy Chairman of Committees thereof

(2) A Member holding office as the Speaker or the Deputy Speaker or the Deputy Chairman of Committees shall vacate such office—

(a) if he ceases, save upon a dissolution of Parliament, to be a member of Parliament, or

(b) if he resigns his office by writing under his hand addressed to the President

(3) Whenever the office of Speaker, Deputy Speaker or Deputy Chairman of Committees becomes vacant, Parliament shall at its first meeting after the occurrence of the vacancy, elect another member to be the Speaker, the Deputy Speaker or the Deputy Chairman of Committees, as the case may be

(4) The members holding office respectively as Speaker, Deputy Speaker and Deputy Chairman of Committees immediately prior to the dissolution of Parliament shall, unless they vacate office earlier and notwithstanding such dissolution, continue to hold such office until the conclusion of the General Election

(5) The Speaker, or in his absence the Deputy Speaker, or in their absence the Deputy Chairman of Committees, shall preside at sittings of Parliament. If none of them is present, a Member elected by Parliament for the sitting shall preside at that sitting of Parliament

# **78. Secretary-General of Parliament**

(1) There shall be a Secretary-General of Parliament who shall be appointed by the President and who shall hold office during good behaviour

(2) The salary of the Secretary-General shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office

(3) The members of the staff of the Secretary-General shall be appointed by him with the approval of the Speaker

(4) The salaries of the members of the staff of the Secretary-General shall be charged on the Consolidated Fund

(5) The office of the Secretary-General shall become vacant—

(a) upon his death

(b) on his resignation in writing addressed to the President,

(c) on his attaining the age of sixty years unless Parliament otherwise provides by law,

(d) on his removal by the President on account of ill health or physical or mental infirmity, or

(c) on his removal by the President upon an address of Parliament

(6) Whenever the Secretary-General is unable to discharge the functions of his office, the President may appoint a person to act in the place of the Secretary-General

#### **79. Vacation of seats**

The seat of a member shall become vacant—

(a) upon his death,

(b) if, by a writing under his hand addressed to the Secretary-General of Parliament, he resigns his seat,

(c) upon his assuming the office of President consequent to his election to such office, by Parliament,

(d) if he becomes subject to any disqualification specified in Article 101 and 102,

(e) if he becomes a member of the Public Service or a Regional Public Service or an employee of a public corporation or, being a member of the Public Service or a Regional Public Service or an employee of a public corporation, does not cease to be member of such service or an employee of such corporation, before he sits in Parliament,

(f) if, without the leave of Parliament first obtained, he absents himself from the sittings of Parliament during a continuous period of three months,

(g) if his election as a member is declared void under the law in force for the time being,

(h) upon the dissolution of Parliament, or

(i) upon a resolution for his expulsion being passed in terms of Article 93

#### **80. Privileges and Powers of Parliament and its members**

The privileges, immunities and powers of Parliament and of its members may be determined and regulated by Parliament by law, and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall, *mutatis mutandis*, apply

#### **81. Remuneration and allowances of Members**

Ministers, Deputy Ministers and Members, including the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, shall be paid such remuneration or allowance as may be provided by Parliament, by law or by resolution, and the receipt thereof shall not disqualify the recipient from sitting or voting in Parliament

#### **82. Power to act notwithstanding vacancies**

Parliament shall have power to act notwithstanding any vacancy in its membership, and its proceedings shall be valid notwithstanding that it is discovered subsequently that a person who was not entitled so to do sat or voted or otherwise took part in the proceedings

## CHAPTER X

### THE CENTRAL LEGISLATURE—PARLIAMENT— PROCEDURE AND POWERS

#### 83 Sessions of Parliament

(1) The President may, from time to time, by Proclamation summon, prorogue and dissolve Parliament

(2) Parliament shall be summoned to meet once at least in every year

(3) A Proclamation proroguing Parliament shall fix a date for the next session, not being more than two months after the date of the Proclamation

Provided that, at any time while Parliament stands prorogues the President may by Proclamation—

(i) summon Parliament for an earlier date, not being less than three days from the date of such Proclamation, or

(ii) subject to the provisions of this Article, dissolve Parliament

(4) All matters which, having been duly brought before Parliament, have not been disposed of at the time of the prorogation of Parliament may be proceeded with during the next session

(5) (a) A Proclamation dissolving Parliament shall fix a date or dates for the election of members of Parliament and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation

(b) Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 75 the President shall forthwith by Proclamation fix a date or dates for the election of members of Parliament and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation

(c) The date fixed for the first meeting of Parliament by a Proclamation under sub-paragraph (a) or sub-paragraph (b) may be varied by a subsequent proclamation provided that the date so fixed by the subsequent Proclamation shall be a date not later than three months after the date of the original Proclamation

(6) If at any time after the dissolution of Parliament, the President is satisfied that an emergency has arisen of such a nature that an earlier meeting of Parliament is necessary, he may by Proclamation summon the Parliament which has been dissolved to meet on a date not less than three days from the date of such Proclamation and such Parliament shall stand dissolved upon the termination of the emergency or the conclusion of the General Election whichever is earlier

#### 84. Adjournment

Parliament may adjourn from time to time as it may determine in resolution or Standing Order, until it is prorogued or dissolved

**85. Voting**

(1) Save as otherwise provided in the Constitution, any question proposed for decision by Parliament shall be decided by the majority of votes of the members present and voting

(2) The person presiding shall not vote in the first instance but shall have and exercise a casting vote in the event of an equality of votes

**86. Quorum**

If at any time during a meeting of Parliament the attention of the person presiding is drawn to the fact that there are fewer than twenty members present, the person presiding shall, subject to any Standing Order, adjourn the sitting without question put

**87. Standing Orders**

(1) Subject to the provisions of the Constitution, Parliament may by resolution or Standing Order provide for—

(i) the election and retirement of the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, and

(ii) the regulation of its business, the preservation of order of its sittings and any other matter for which provision is required or authorised to be so made by the Constitution

(2) Until Parliament otherwise provides by law or by resolution, the Standing Orders of Parliament, in force immediately prior to the commencement of the Constitution, shall, *mutatis mutandis*, be the Standing Orders of Parliament

**88. Legislative Power**

Notwithstanding anything in this Constitution, Parliament shall have power to make law, repealing or amending any provision of the Constitution, or adding any provision to the Constitution

Provided that Parliament shall not make any law—

(a) suspending the operation of the Constitution or any part thereof, or

(b) repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it

**89. Publication and Passing of Bills**

(1) Every Bill shall be published in the Gazette at least fourteen days before it is placed on the Order Paper of Parliament

(2) The passing of a Bill or a resolution by Parliament shall be in accordance with the Constitution and the Standing Orders of Parliament. Any one or more of the Standing Orders may be suspended by Parliament in the circumstances and in the manner prescribed by the Standing Orders

**90. Certificate of Speaker**

The Speaker shall endorse on every Bill passed by Parliament a certificate in the following form

"This bill (here state the short title of the Bill) has been duly passed by Parliament "

Such certificate may also state the majority by which such Bill was passed

Provided that where by virtue of the provisions of Article 94 or Article 95 or Article 96 or Article 164(2) a special majority is required for the passing of a Bill, the Speaker shall certify such Bill only if such Bill has been passed with such special majority

Provided further that where by virtue of Article 95, the Bill or any provision thereof requires the approval of the People at a Referendum, such certificate shall further state that the Bill or such provision shall not become law until approved by the People at a Referendum

#### **91 When Bill becomes law**

(1) Subject to the provisions of paragraph (2) of this Article, a Bill passed by Parliament shall become law when the certificate of the Speaker is endorsed thereon

(2) Where the Cabinet of Ministers has certified that any Bill or any provision thereof is intended to be submitted for approval by the People at a Referendum or where the Supreme Court has determined that a Bill or any provision thereof requires the approval of the People at a Referendum such Bill or such provision shall become law upon being approved by the People at a Referendum in accordance with paragraph (2) of Article 97 only when the President certifies that the Bill or provision thereof has been so approved. The President shall endorse on every Bill so approved a certificate in the following form

"This Bill/provision has been duly approved by the People at a Referendum "

Every such certificate shall be final and conclusive, and shall not be called in question in any court

#### **92. Validity of Acts not to be questioned**

Subject to the provisions of Article 165, where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act or of any provision contained therein on any ground whatsoever

#### **93 Imposition of Civic disability**

(1) Where a Special Presidential Commission of Inquiry established under the Special Presidential Commission of Inquiry Law and consisting of a member or members each of whom is a Judge of the Supreme Court, Court of Appeal, High Court or the District Court recommends that any person should be made subject to civic disability by reason of any act done or omitted to be done by such person before or after the commencement of the Constitution Parliament may by resolution passed by not less than two thirds of the whole number of members (including those not present) voting in its favour—

(a) impose civic disability on such person for a period not exceeding seven years; and

(b) expel such person from Parliament, if he is a Member of Parliament

Where a Special Presidential Commission of Inquiry consists of more than one member, a recommendation made by the majority of such members, in case of any difference of opinion, shall be, and shall be deemed for all purposes to be, the recommendation of such Commission of Inquiry

(2) No such resolution shall be entertained by the Speaker or placed on the Order Paper of Parliament unless introduced by the Prime Minister with the approval of the Cabinet of Ministers

(3) The Speaker shall endorse on every resolution passed in accordance with the preceding provision of this Article a certificate in the following form

"This resolution has been duly passed by Parliament in accordance with the provisions of Article 93 of the Constitution"

Every such certificate shall be conclusive for all purposes and shall not be questioned in any court, and no court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever

(4) In this Article, "District Court" means a District Court created and established by existing law and includes a court that may be created by Parliament to exercise and perform powers and functions corresponding or substantially similar to the powers and functions exercised and performed by the District Court

## CHAPTER XI

### THE CENTRAL LEGISLATURE— AMENDMENT OF THE CONSTITUTION

#### 94. Amendment or repeal of the Constitution must be express

(1) No Bill for the amendment of any provision of the Constitution shall be placed on the Order Paper of Parliament unless the provision to be repealed, altered or added, and consequential amendments, if any, are expressly specified in the Bill and is described in the long title thereto as being an Act for the amendment of the Constitution

(2) No Bill for the repeal of the Constitution shall be placed on the Order Paper of Parliament unless the Bill contains provisions replacing the Constitution and is described in the long title thereof as being an Act for the repeal and replacement of the Constitution

(3) If in the opinion of the Speaker, a Bill does not comply with the requirements of paragraph (1) or paragraph (2) of this Article, he shall direct that such Bill be not proceeded with unless it is amended so as to comply with those requirements

(4) Notwithstanding anything in the preceding provisions of this Article, it shall be lawful for a Bill which complies with the requirements of paragraph (1) For paragraph (2) of this Article to be amended by Parliament provided that the Bill as so amended shall comply with those requirements

(5) A Bill for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of members (including those not present) and upon a certificate by the President or Speaker, as the case may be, being endorsed thereon in accordance with the provisions of Article 90 or 91

(6) No provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provision thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article

(7) In this Chapter, "amendment" includes repeal, alteration and addition

#### 95 Approval of certain Bills at a referendum

Notwithstanding anything to the contrary in the provisions of Article 94—

(a) a Bill for the amendment or the repeal and replacement of or which is inconsistent with any of the provisions of Articles 1, 2, 3, 4, 5, 6, 7, 8, 9 and 15 of this Article, and

(b) a Bill for the amendment or for the repeal and replacement of or which is inconsistent with the provisions of paragraph (2) of Article 75 which would extend the duration of Parliament to over six years, shall become law if the number of votes cast in favour thereof, amounts to not less than two-thirds of the whole number of members (including those not present) is approved by the People at a Referendum and a certificate endorsed thereon by the President in accordance with Article 91

#### 96 Bills inconsistent to the Constitution

(1) A Bill which is not for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, but which is inconsistent with any provision of the Constitution may be placed on the Order Paper of Parliament without complying with the requirements of paragraph (1) or paragraph (2) of Article 94

(2) Where the Cabinet of Ministers has certified that a Bill is intended to be passed by the special majority required by this Article or where the Supreme Court has determined that a Bill requires to be passed by such special majority, such Bill shall become law only if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of members (including those not present) and a certificate by the President and the Speaker, as the case may be, is endorsed thereon in accordance in the case provisions of Article 90 or Article 91

(3) Such a Bill when enacted into law shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the members present and voting

## CHAPTER XII REFERENDUM

### 97. Submission of Bills to People by Referendum

(1) The president shall submit to the people by Referendum every Bill or any provision in any Bill which the Cabinet of Ministers has certified as being intended to be submitted to the people at a Referendum, or which the Supreme Court has determined as requiring the approval of the People at a Referendum, if the number of votes cast in favour of such Bill, amounts to not less than two-thirds of the whole number of members (including those not present)

(2) Any Bill or any provision in any Bill submitted to the people at a Referendum shall be deemed to be approved by the People if approved by an absolute majority of the valid votes cast at such Referendum

Provided that when the total number of valid votes cast does not exceed two-thirds of the whole number of electors entered in the register of electors, such Bill shall be deemed to be approved by the People only if approved by not less than one third of the whole number of such electors

### 98. Submission of matters of national importance to people by referendum

The President may, subject to the provisions of Article 97, submit to the People at a Referendum any matter which in the opinion of the President is of national importance

### 99. Parliament to provide for procedure

(1) Every Referendum shall be conducted by the Elections Commission and the Commissioner of Elections shall communicate the result thereof to the President

(2) Parliament shall by law provide for all matters relating to the procedure for the submission of Bills and of matters of national importance to the People by Referenda, the register of electors to be used at a Referendum, the creation of offences relating thereto and the punishment therefor, and all other matters necessary or incidental thereto

## CHAPTER XIII FRANCHISE AND THE ELECTIONS

### 100. Right to be an elector

Every person shall, unless disqualified as hereinafter provided, be qualified to be an elector at the election of members of Parliament and of members of a Regional Council and to vote at any Referendum

Provided that no such person shall be entitled to vote unless his name is entered in the appropriate register of electors

#### 101. Disqualification to be an elector

No person shall be qualified to be an elector at an election of members of Parliament or members of a Regional Council or to vote at any Referendum if he is subject to any of the following disqualification, namely—

(a) if he is not a citizen of Sri Lanka,

(b) if he has not attained the age of eighteen years on the qualifying date specified by law under the provisions of Article 114, or

(c) if he is under any law in force in Sri Lanka found or declared to be of unsound mind,

(d) if he is serving or has during the period of seven years immediately preceding completed serving of a sentence of imprisonment (by whatever name called) for a term not less than six months imposed after conviction by any court for an offence punishable with imprisonment for a term not less than two years or is under sentence of death or is serving or has during the period of seven years immediately preceding completed the serving of a sentence of imprisonment for a term not less than six months awarded in lieu of execution of such sentence

Provided that if any person disqualified under this paragraph is granted a free pardon such disqualification shall cease from the date on which the pardon is granted,

(e) if a period of seven years has not elapsed since—

(i) the last of the dates, if any, of his being convicted of any offence under section 66 or 76 of the Parliamentary Elections Act, No 1 of 1981, or of such offence under the law for the time being relating to Referenda or the election of the President, or of members of Parliament or of members of Provincial Councils or Regional Councils, as would correspond to an offence under either of the said two sections,

(ii) the last of the dates, if any, of his being convicted of a corrupt practice under the Parliamentary Elections Act, No 1 of 1981, or of such offence under the law for the time being relating to Referenda or the election of the President or of members of Parliament or of members of Provincial Councils or Regional Councils, as would correspond to the said corrupt practice,

(iii) the last of the dates, if any, being a date after the commencement of the Constitution, of a report made by a Judge finding him guilty of any corrupt practice under the Parliamentary Elections Act, No 1 of 1981 of 1981, or under any law for the time being relating to Referenda, or of members of Parliament or of members of Provincial Councils or Regional Councils;

(iv) the last of the dates, if any, of his being convicted or being found guilty of bribery under the provisions of the Bribery Act or of any future act as would correspond to the Bribery Act

(f) if a period of five years has not elapsed since—

(i) the last of the dates, if any of his being convicted of an offence under the provisions of sections 77 to 82 (both inclusive) of the *Local Authorities Elections Ordinance* or for such offence under any future law as would correspond to any offence under the said sections' or

(ii) the last of the dates, if any of his being convicted of an offence under the provisions of sections 2 and 3 of the *Public Bodies (Prevention of Corruption) Ordinance* or of such offence under any future law as would correspond to the said offence,

(g) if a period of three years has not elapsed since—

(i) the last of the dates, if any of his being the *Parliamentary Elections Act, No 1 of 1981*, or of such offence under the law for the time being relating to *Referenda*, or of members of *Parliament* or of members of *Provincial Councils* or *Regional Councils* as would correspond to the said illegal practice,

(ii) the last of the dates, if any, being a date after the commencement of the *Constitution*, of a report made by a Judge finding him guilty of any illegal practice under the *Parliamentary Elections Act, No 1 of 1981*, or under any law for the time being relating to *Referenda*, or of members of *Parliament* or of members of *Provincial Councils* or *Regional Councils*,

(h) if a resolution for the imposition of civic disability upon him has been passed in terms of Article 93 and the period of such civic disability specified in such resolution has not expired,

(i) if a period of seven years has not elapsed since—

(i) the date of his being convicted of any offence under the provisions of sections 188 to 201 (both inclusive) of the *Penal Code* or for such other offence under any future law as would correspond to any offence under the said sections, or

(ii) the date of his being convicted of an offence of contempt against, or in disrespect of, the authority of any *Special Presidential Commission of Inquiry* consisting of such member or members as are specified in Article 93 by reason of—

(1) the failure of such person, without cause which in the opinion of such commission is reasonable, to appear before such commission at the time and place mentioned in any summons which such commission is empowered by law to issue, or

(2) the refusal of such person to be sworn or affirmed, or the refusal or failure of such person, without cause which in the opinion of such commission is reasonable, to answer any question put to such person touching the matters directed to be inquired into by such commission, or

(3) the refusal or failure of such person, without cause which in the opinion of such commission is reasonable, to produce and show

to such commission any document or thing which is in the possession or power of such person and which in the opinion of such commission is necessary for arriving at the truth of the matters to be inquired into by such commission,

(j) if the period of his disqualification imposed under Article 158 has not elapsed

## 102. Qualification for election as Member of Parliament

(1) Every person who is qualified to be a elector shall be qualified to be elected as a member of Parliament unless he is disqualified under the provisions of paragraph (2)

(2) No person shall be qualified to be elected as a member of Parliament or to sit and vote in Parliament—

(a) if he is or becomes subject to any of the disqualification specified in Article 101,

(b) if he—

(i) stands nominated as a candidate for election for more than one electoral district at a General Election,

(ii) stands nominated as a candidate for election by more than one recognised political party or independent group in respect of any electoral district,

(iii) stands nominated as a candidate for election for an electoral district and before the conclusion of the election for that electoral district, stands nominated as a candidate for election for any other electoral district,

(iv) being a member of Parliament, except in the circumstances referred to in Article 83 (6) or Article stands nominated as a candidate for election for any electoral district,

(c) if he is the President of the Republic,

(d) if he is the Governor of a Region,

(e) if he is—

(i) a Judicial Officer,

(ii) the Parliamentary Commissioner for Administration (Ombudsman),

(iii) the Secretary General of Parliament or a member of his staff,

(iv) a member of the National Public Service Commission, or the Income Commission or the National Police Commission or a Regional Judicial Service Commission or a Regional Public Service Commission or a Regional Police Commission

(v) the Commissioner of Elections or a member of the Election Commission,

(vi) the Auditor-General,

(vi) a public officer holding any office created prior to November 18, 1970, the initial of the salary scale of which was, on November 18, 1970, not less than Rs 6,720 per annum or such other amount per annum as would, under any subsequent revision of salary scales, correspond to such initial,

(vii) a public officer holding any office created after November 18, 1970, the initial of the salary scale of which is, on the date of creation of that office, not less than the initial of the salary scales applicable, on that date, to an office referred to in item

(vi) or such other amount per annum as would, under any subsequent revision of salary scales, correspond to the first mentioned initial,

(ix) an officer in any public corporation holding any office created prior to November 18, 1970, the initial of the salary scale of which was, on November 18, 1970, not less than Rs 7,200 per annum or such other amount per annum as would, under any subsequent revision of salary scales, correspond to such initial,

(x) an officer in any public corporation or of any Regional Public Service, holding any office created after November 18, 1970, the initial of the salary scale of which is, on the date of creation of that office, not less than the initial of the salary scale applicable on that date to an office referred to in item (ix) or such other amount per annum as would, under any subsequent revision of salary scales, correspond to the first mentioned initial,

(xi) a member of the Regular Force of the Army, Navy or Air Force, or

(xii) a police officer or a public officer exercising police functions,

(f) if he has any such interest in any such contract made by or on behalf of the State or a public corporation as Parliament shall by law prescribe,

(g) if he is an undischarged bankrupt or insolvent, having being declared bankrupt or insolvent,

(h) if during the preceding seven years he has been adjudged by a competent court or by a Special Presidential Commission of Inquiry to have accepted a bribe or gratification offered with a view to influencing his judgement as a member of Parliament or as a member of the legislature prior to the commencement of the Constitution

(3) For the purposes of sub paragraph (h) of paragraph (2) of this Article, the acceptance by a member of Parliament of any allowance or other payment made to him by any trade union or other organisation solely for the purpose of his maintenance shall be deemed not to be the acceptance of a bribe or gratification

### 103. Election to be free equal and secret

The voting for the election of the members of Parliament and of members of Regional Councils and at any Referendum shall be free, equal and by secret ballot

**104. Commissioner of Elections**

(1) There shall be a Commissioner of Elections who shall be appointed by the President and who shall hold office during good behaviour

(2) The salary of the Commissioner of Elections shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office

(3) The office of the Commissioner of Elections shall become vacant—

- (a) upon his death,
- (b) on his resignation in writing addressed to the President,
- (c) on his attaining the age of sixty years,
- (d) on his removal by the President on account of ill health or physical or mental infirmity, or
- (e) on his removal by the President upon an address of Parliament

(4) Whenever the Commissioner of Elections is unable to discharge the functions of his office, the President may appoint a person to act in the place of the Commissioner of Elections

(5) The President may in exceptional circumstances permit a Commissioner of Elections who has reached the age of sixty years to continue in office for a period not exceeding twelve months

**105. Election Commission**

(1) There shall be an Election Commission consisting of the Commissioner of Elections and such number of Deputy Commissioners and Assistant Commissioners as may be determined by Parliament

(2) The members of the Election Commission shall be appointed by the President.

(3) The Commissioner of Elections shall be the Chairman of the Election Commission

(4) The President may remove a member of the Election Commission other than its Chairman, on a recommendation made by the Chairman

(5) A member of the Election Commission other than the Chairman may resign from the Commission by letter addressed in that behalf to the President

**106 Powers duties and functions of Election Commission**

The Election Commission shall exercise, perform or discharge all such powers, duties or functions as may be conferred or imposed on or assigned to it by the law for the time being in force relating to election of members of Parliament and of members of Regional Councils and to Referenda, or by any other written law

**107. Delimitation Commission**

(1) Within three months of the commencement of the Constitution the President shall for the delimitation of electoral districts for the election of members of Parliament, establish a Delimitation Commission consisting of

three persons appointed by him who he is satisfied are not actively engaged in politics. The President shall appoint one of such persons to be the Chairman.

(2) If any member of the Delimitation Commission shall die or resign or if the President is satisfied that any such member has become incapable of discharging his functions as such, the President shall, in accordance with the provisions of paragraph (1) of this Article, appoint another person in his place.

#### **108. Electoral districts**

(1) The Delimitation Commission shall divide Sri Lanka into not less than twenty and not more than twenty-five electoral districts, and shall assign names thereto.

(2) Each region of Sri Lanka may itself constitute an electoral district or may be divided into two or more electoral districts.

(3) Where a region is divided into a number of electoral districts the Delimitation Commission shall have regard to the existing administrative districts so as to ensure as far as is practicable that each electoral district shall be an administrative district or a combination of two or more administrative districts or two or more electoral districts together constitute an administrative district.

(4) The electoral districts of each region shall together be entitled to return four members, (independently of the number of members which they are entitled to return by reference to the number of electors whose names appear in the registers of electors of such electoral district), and the Delimitation Commission shall apportion such entitlement equitably among such electoral districts.

(5) In the event of a difference of opinion among the members of the Delimitation Commission, the opinion of the majority thereof shall prevail and shall be deemed to be the decision of the Commission, where each member of the Commission is of a different opinion, the opinion of the Chairman shall be deemed to be the decision of the Commission. Any dissentient member may state his reasons for such dissent.

(6) The Chairman of the Delimitation Commission shall communicate the decisions of the Commission together with the reasons, if any, stated by a dissentient member to the President.

#### **109. Proclamation of names etc. of Electoral Districts**

The President shall by Proclamation publish the names and boundaries of the electoral districts and the number of members, which each such electoral district is entitled to return by virtue of the provisions of paragraph (4) of Article 108 in accordance with the decision of the Delimitation Commission. The electoral districts specified in the Proclamation shall come into operation at the next ensuing General Election of members of Parliament and shall thereafter be the electoral districts of Sri Lanka for all the purposes of the Constitution and of any law for the time being in force relating to the election of members of Parliament.

**110. Number of members to be returned by the several electoral districts and their apportionment among such electoral districts**

(1) The several electoral districts shall together be entitled to return one hundred and ninety-six members

(2) The apportionment of the number of members that each electoral district shall be entitled to return shall, in the case of thirty-six members, be determined in accordance with the provisions of paragraph (4) of Article 108

(3) The apportionment of the number of members that each electoral district shall be entitled to return out of the balance number of one hundred and sixty members shall be determined in accordance with the succeeding provisions of this Article

(4) The total number of electors whose names appear in the registers of electors of all the electoral districts shall be divided by one hundred and sixty. The whole number, resulting from such division (any fraction not being taken into account) is hereinafter referred to as the "qualifying number"

(5) The total number of electors whose names appear in the register of electors of each electoral district shall be entitled to return such number of members as is equivalent to the whole number resulting from the division of the total number of such electors in that electoral district by the qualifying number and the balance number of such electors, if any, after such division shall be dealt with, if necessary, in accordance with paragraph (6) of this Article

(6) Where the total number of members to be returned by all the electoral districts ascertained by reference to the qualifying number in accordance with paragraph (5) of this Article is less than one hundred and sixty members, the apportionment of the entitlement among the electoral districts of the balance number of members shall be by reference to the balance number of such electors and in the case of any electoral district not entitled to return a single member according to the determination made under paragraph (5), the total number of electors whose names appear in the register of electors of such electoral district, the electoral district having the highest of such balance number of such electors or such total number of such electors being entitled to return one more member and so on until the total number of members to be returned number one hundred and sixty

(7) Where in making an apportionment under paragraph (6) of this Article an equality is found to exist between two or more balance number of such electors or two or more total number of such electors or any combination of them and the addition of one such elector would entitle one electoral district to return an additional member, the determination of the electoral district to which one such elector shall be deemed to be added shall be determined by lot

(8) The Commissioner of Elections, as soon as possible after the certification of the registers of electors for all the electoral districts shall, by order published in the Gazette certify the number of members which each electoral district is entitled to return by virtue of the Proclamation under Article 109 and this Article

(9) For the purposes of this Article "the register of electors" means the register of electors for the time being in operation on the basis of which an election is being held

### 111. Proportional representation

(1) At any election of members of Parliament the total number of members which an electoral district is entitled to return shall be the number specified by the Commissioner of Elections in the order published in accordance with the provisions of paragraph (8) of Article 110

(2) Every elector at an election of members of Parliament shall, in addition to his vote, be entitled to indicate his preferences for not more than three candidates nominated by the same recognised political party or independent group

(3) Any recognised political party or any group of persons contesting as independent candidates (hereinafter referred to as an "independent group") may for the purpose of any election of members of Parliament for any electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for that electoral district, increased by three

(4) Each elector whose name appears in the register of electors shall be entitled to only one vote notwithstanding that his name appeared in the electoral register in more than one electoral district

(5) The recognised political party or independent group which polls the highest number of votes in any electoral district shall be entitled to have the candidates nominated by it, who has secured the highest number of preferences, declared elected

(6) (a) Every recognised political party and independent group polling less than one twentieth of the total votes polled at any election in any electoral district shall be disqualified from having any candidates of such party or group being elected for that electoral district

(b) The votes polled by the disqualified parties and independent groups, if any, shall be deducted from the total votes polled at the election in that electoral district and the number of votes resulting from such deduction is hereinafter referred to as the "relevant numbers of votes "

(7) The relevant number of votes shall be divided by the number of members to be elected for that electoral district reduced by one, if the number resulting from such division is an integer, that integer, or if that number is an integer and fraction, the integer immediately higher to that integer and fraction is hereinafter referred to as the "resulting number"

(8) The number of votes polled by each recognised political party and independent group (other than those parties or groups disqualified under paragraph (6) of this Article) beginning with the party or group which polled the highest number of votes shall then be divided by the resulting number and the returning officer shall declare elected from each such party or group, in

accordance with the preferences secured by each of the candidates nominated by such party or group (the candidate securing the highest number of preferences being declared elected first, the candidate securing the next highest number of preferences being declared elected next and so on) such number of candidates (excluding the candidate declared elected under paragraph (5) of this Article) as is equivalent to the whole number resulting from the division by the resulting number of the votes polled by such party or group. The remainder of the votes, if any, after such division, shall be dealt with if necessary, under paragraph (9) of this Article.

(9) Where after the declaration of the election of members as provided in paragraph (8) of this Article there are one or more members yet to be declared elected, such member or members shall be declared elected by reference to the remainder of the votes referred to in paragraph (8) to the credit of each party or group after the declaration made under that paragraph and the votes polled by any party or group not having any of its candidates declared elected under paragraph (8), the candidate nominated by the party or group having the highest of such votes, who has secured the highest or next highest number of preferences being declared elected a member and so on until all the members to be elected are declared elected.

(10) (a) Where the number of votes polled by each recognised political party or independent group is less than the resulting number referred to in paragraph (7) of this Article the party or group which has polled the highest number of votes shall be entitled to have the candidate nominated by that party or group (excluding the candidate declared elected under paragraph (5) of this Article) who has secured the highest number of preferences declared elected and if there are one or more members yet to be declared elected, the party or group having the next highest number of votes polled shall be entitled to have the candidate nominated by that party or group who has secured the highest number of preferences declared elected and so on, until all the members to be elected for that electoral district are declared elected under the provisions of this paragraph.

(b) After the determination under paragraph (a) if there are one or more members yet to be declared elected in respect of that electoral district the provisions of that paragraph shall *mutatis mutandis* apply to the election of such members.

(11) Where under paragraph (5) or (9) or (10) of this Article an equality is found to exist between the votes polled by two or more recognised political parties or two or more independent groups or any combination of them and the addition of a vote would entitle the candidate of one such party or group to be elected, the determination of the party or group to which such additional vote shall be deemed to have been given shall be made by lot.

(12) For the purposes of this Article the number of votes polled shall be deemed to be the number of votes counted other than rejected votes.

(13) (a) Where a member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognised political party or independent group on whose nomination paper (hereinafter referred to as the "relevant nomination paper") his name appeared at the time of his becoming such member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member

Provided that in the case of the expulsion of a member of Parliament his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three Judges of the Supreme Court who shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid the vacancy shall occur from the date of such determination.

(b) Where the seat of a member of Parliament (other than a member declared elected under Article 112) becomes vacant as provided in Article 79 (other than paragraph (g) of that Article) or by virtue of the preceding provisions of this paragraph the candidate from the relevant recognised political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.

In this paragraph, "nomination paper" when used in relation to a recognised political party or independent group, includes a list submitted by that recognised political party or independent group under paragraph (2) of Article 112.

#### **112. Election of Members of Parliament on the basis of the total number of votes polled at a General Election**

(1) After the one hundred and ninety six members referred to in Article 110 have been declared elected at a General Election of members of Parliament, the Commissioner of Elections shall forthwith apportion the balance twenty nine seats among the recognised political parties and independent groups contesting such General Election in the same proportion as the proportion which the number of votes polled by each such party or group at such General Election bears to the total number of votes polled at such General Election and for the purposes of such apportionment, the provisions of paragraphs (4), (5), (6) and (7) of Article 110 shall, *mutatis mutandis*, apply.

(2) Every recognised political party or independent group contesting a General Election shall submit to the Commissioner of Elections within the nomination period specified for such election a list of persons qualified to be elected as members of Parliament, from which it may nominate persons to fill the seats, if any, which such party or group will be entitled to, on such apportionment. The Commissioner of Elections shall cause every list

submitted to him under this Article to be published forthwith in the Gazette and in one Sinhala, Tamil and English newspaper upon the expiry of the nomination period

(3) Where a recognised political party or independent group is entitled to a seat under the apportionment referred to in paragraph (2) the Commissioner of Elections shall by a notice, require the secretary of such recognised political party or group leader of such independent group to nominate within one week of such notice, persons qualified to be elected as members of Parliament (being persons whose names are included in the list submitted to the Commissioner of Elections under this Article or in any nomination paper submitted in respect of any electoral district by such party or group at that election) to fill such seats and shall declare elected as members of Parliament, the persons so nominated

(4) The Commissioner of Elections shall before issuing the aforesaid notice determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 111 is commensurate with the national population ratio and request the Secretary of such recognised political party or group leader of such independent group in so nominating persons to be elected as members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with their national population ratios

(5) Where the seat of a member of Parliament elected under this Article becomes vacant, as provided for in Article 79 or sub-paragraph (a) of paragraph (13) of Article 111, the provisions of paragraphs (3) and (4) of this Article shall, *mutatis mutandis*, apply to the filling of such vacancy

For the purposes of this Article the number of votes polled at a General Election shall be deemed to be the number of votes actually counted and shall not include any votes rejected as void

### 113 Penalty for sitting and voting in Parliament or Regional Council when disqualified

Any person who—

(a) having been elected a member of Parliament or a member of a Regional Council but not having been at the time of such election qualified to be so elected shall sit or vote in Parliament or such Regional Council or

(b) shall sit or vote in Parliament or a Regional Council after his seat therein has become vacant or he has become disqualified from sitting or voting therein, knowing or having reasonable grounds for knowing that he was so disqualified or that his seat has become vacant as the case may be, shall be liable to a penalty of five hundred rupees for every day upon which he so sits or votes to be recovered as a debt due to the Republic by an action instituted by the Attorney-General in the District Court of Colombo

**114. Parliament may make provision in respect of elections**

(1) Parliament may by law make provision for—

- (a) the registration of electors,
- (b) the prescribing of a qualifying date on which a person should be resident in any electoral district to be entered in the register of electors of that electoral district,
- (c) the prescribing of a qualifying date on which a person should have attained the age of eighteen years to qualify for the purposes of registration as an elector,
- (d) the preparation and revision of registers of electors,
- (e) the procedure for the election of members of Parliament and of members of Regional Councils,
- (f) the creation of offences relating to such elections and the punishment therefore,
- (g) the grounds for avoiding such elections, and where an election has been held void the manner of holding fresh elections,
- (h) the form and manner in which vacancies shall be filled when all the candidates whose names appearing in the nomination paper of a recognised political party or independent group have been exhausted by election or otherwise,
- (i) the manner of determination of disputed elections and such other matters as are necessary or incidental to the election of members of Parliament and of members of Regional Councils

Provided that no such law shall add to the disqualification's specified in Articles 101 and 102

(2) Until Parliament by law makes provision for such matters, the Parliamentary Elections Act No 1 of 1981 and the Provincial Councils Elections Act, No 1 of 1988 as amended from time to time, shall, subject to the provisions of the Constitution, *mutatis mutandis*, apply, to the election of members of Parliament and to the election of members of Regional Councils

**115. Public Officer or an Officer of a Public Corporation not to Function during period of Election**

When a public officer or an officer of a public corporation is a candidate at any election of members of Parliament or of members of a Regional Council, he shall be deemed to be on leave from the date on which he stands nominated as a candidate until the conclusion of the election. Such a public officer or an officer of a public corporation shall not during such period exercise, perform or discharge any of the powers, duties or functions of his office

## **CHAPTER XIV**

### **CONSTITUTIONAL COUNCIL**

#### **116 Constitutional Council**

(1) There shall be a Constitutional Council which shall consist of the following —

- (a) the Speaker,
- (b) the Prime Minister,
- (c) the Leader of the Opposition,
- (d) the Chairman of the Chief Minister's Conference,
- (e) seven members of Parliament nominated by the Committee of Selection of Parliament, reflecting as far as practicable the different ethnic and interest groups,
- (f) two retired Judges of the Supreme Court or of the Court of Appeal nominated by the Speaker

(2) The Speaker shall be the Chairman of the Constitutional Council

(3) A member referred to in sub-paragraph (e) of paragraph (1) of this Article shall unless he earlier resigns from office by a letter addressed to the Chairman of the Committee of Selection or is removed from office by such Committee or ceases to be a member of Parliament, hold office to a period of six years

#### **117. Appointment of members of certain Commissions and Public bodies to be on the recommendation of the Constitutional Council**

(1) No person shall be appointed as a member of any of the Commissions and public bodies specified in Schedule A or as a member of any other public body as Parliament may determine by law, except on the recommendation of the Constitutional Council

(2) It shall be the duty of the Constitutional Council to recommend to the President persons for appointment as members of the Commissions or public bodies referred to in Schedule A and in such law whenever the occasion for such appointment arises, and such recommendations shall reflect as far as practicable the different ethnic and interest groups

#### **118 Appointment to certain offices to be with the approval of the Constitutional Council**

(1) No person shall be appointed to any of the offices specified in Schedule B or as a member of any other public body as Parliament may determine by law, except with the approval of the Constitutional Council

(2) It shall be the duty of the President to submit for approval to the Constitutional Council, names of persons for appointment to any of the offices referred to in Schedule B or such law whenever the occasion for such appointment arises

**119. Secretary to the Constitutional Council and procedure at meetings of the Council**

(1) There shall be appointed a Secretary to the Constitutional Council appointed by the Council

(2) The Constitutional Council shall meet as often as may be necessary to perform the duties imposed on such Council by the provisions of this Chapter and such meetings shall be summoned by the Secretary to the Constitutional Council

(3) The Chairman shall preside at all meetings of the Constitutional Council and in the absence of the Chairman from any meeting of the Constitutional Council, the Prime Minister shall preside at such meeting. In the absence of both Chairman and Prime Minister from any meeting of the Constitutional Council, a member elected by the members present at such meeting shall preside at such meeting

(4) The quorum for any meeting of the Constitutional Council shall be seven

(5) The Constitutional Council shall endeavour to make every recommendation or approval it is required to make, by unanimous decision. In the absence of a unanimous decision, the decision of the majority shall prevail

(6) In the event of an equality of votes on any question for decision at any meeting of the Constitutional Council, the member presiding at such meeting shall have a casting vote

(7) Subject to the preceding provisions of this Article, the Constitutional Council may regulate the procedure in regard to its meetings and the transaction of business at such meetings

**120. Other duties and functions of the Constitutional Council.**

The Constitutional Council shall also perform and discharge such other duties and functions as are prescribed by this Constitution or by law

***SCHEDULE A***

- (a) The Public Service Commission,
- (b) The Commission to Investigate Allegations of Bribery or Corruption,
- (c) The Official Languages Commission,
- (d) The University Grants Commission,
- (e) The Election Commission,
- (f) The Finance Commission

***SCHEDULE B***

- (a) The Attorney General,
- (b) The heads of the army, navy and air force and the police force,
- (c) The Commissioner of Elections,
- (d) The Parliamentary Commissioner for Administration (Ombudsman),
- (e) The Auditor-General

## CHAPTER XVI

THE JUDICIARY INSTITUTIONS  
FOR THE ADMINISTRATION OF JUSTICE

## 145. Establishment of Courts

(1) Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the people shall be—

(a) the Supreme Court of the Republic of Sri Lanka, which shall be the highest and final Superior Court of record in the Republic;

(b) the Court of Appeal of the Republic of Sri Lanka,

(c) the High Court established for each Region, and

(d) such courts of First Instance, tribunals or institutions as Parliament may from time to time ordain and establish

(2) Subject to the provisions of the Constitution, all courts, tribunals and institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, shall be deemed to be courts, tribunals and institutions created and established by Parliament. Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions.

(3) The Supreme Court, the Court of Appeal, the Regional High Courts and the courts, tribunals and institutions referred to in this Chapter shall have and exercise such powers and jurisdiction conferred on such courts, tribunals and institutions by the constitution, or subject to the provisions of the Constitution by existing law as well as any such powers and jurisdiction, appellate or original, as Parliament may by law vest and ordain.

(4) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior Court of record and shall have all the powers of such Court including the power to punish for contempt of itself, whether committed in the Court itself or elsewhere, with imprisonment or fine or both as the Court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in sub-paragraphs (c) and (d) of paragraph (1) of this Article, whether committed in the presence of such court or elsewhere.

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.

(5) Parliament may by law provide for the creation and establishment of courts, tribunals or institutions for the adjudication and settlement of matters relating to the discipline of bhikkhus or any dispute between bhikkhus or any other dispute relating to the performance of services in or in relation to temples. Such law may notwithstanding anything to the contrary in this Constitution make provision —

(a) for the appointment, transfer, dismissal and disciplinary control of the member or members of such courts, tribunals or institutions by President or by such other person or body of persons as may be provided for in such law,

(b) for the exclusion of the jurisdiction of any other institution referred to in paragraph (1) of this Article in relation to such matters and disputes

In this paragraph the expressions "bhikkhu" and "temple" shall have the same meanings as in the Buddhist Temporalities Ordinance, as at the commencement of the Constitution

## THE SUPREME COURT AND THE COURT OF APPEAL

### 146. Constitution of the Supreme Court

(1) The Supreme Court shall consist of the Chief Justice and not less than six and not more than ten other Judges who shall be appointed as provided for in Article 149

(2) The Supreme Court shall have power to act notwithstanding any vacancy in its membership. No act or proceeding of the Court shall, or shall be deemed to be, invalid by a reason only of any such vacancy or any defect in appointment of a Judge

(3) The several jurisdictions of the Supreme Court shall be ordinarily exercised at Colombo, unless the Chief Justice otherwise directs

(4) The jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of that Court sitting apart

Provided that its jurisdiction shall, subject to the provisions of the Constitution, ordinarily be exercised at all times by not less than three Judges of the Court sitting together as the Supreme Court

(5) The Chief Justice may,—

(a) of his own motion, or

(b) at the request of two or more judges hearing any matters, or

(c) on the application on a party to any appeal, proceeding or matter, if the question involved is in the opinion of the Chief Justice, one of general and public importance, direct that such appeal, proceeding or matter be heard by a Bench comprising of five or more judges of the Supreme Court

(6) The judgement of the Supreme Court shall, when it is not a unanimous decision be the decision of the majority

(7) Any party proceedings in the Supreme Court in the exercise of its jurisdiction shall have the right to be heard in such proceedings either in person or by representation by an Attorney-at-law

(8) The Supreme Court may in its discretion, grant to any other person or his legal representative, such hearing as may appear to the Court to be necessary in the exercise of its jurisdiction

(9) The Registrar of the Supreme Court shall be in charge of an officer designated the Registrar of the Supreme Court who shall be subjected to the supervision, direction and control of the Chief Justice

(10) Subject to the provisions of this Constitution, Parliament may by law confer any additional jurisdiction and powers on the Supreme Court and may vary or remove any jurisdiction of power vested in the Supreme Court by any written law other than by this Constitution

#### 147. Rules of the Supreme Court

(1) Subject to the provisions of the Constitution and of any law the Chief Justice with any three Judges of the Supreme Court nominated by him, may, from time to time, make rules regulating generally the practice and procedure of the Court including

(a) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the terms under which appeals to the Supreme Court, Court of Appeal, and the Regional High Courts are to be entertained and provision for the dismissal of such appeals for non-compliance with such rules,

(b) rules as to the proceedings in the Supreme Court Court of Appeal, and the Regional High Courts in the exercise of the several jurisdictions conferred on such Courts by the Constitution or by any law, including the time within which such matters may be instituted or brought before such Courts and the dismissal of such matters for non-compliance with such rules,

(c) rules as to the stay of proceedings,

(d) rules providing for the summary determination of any appeal or any other matter before such Court by petition or otherwise which appears to the Court to be frivolous and vexatious or brought for the purpose of delay,

(e) the preparation of copies of records for the purpose of appeal or other proceedings in the Supreme Court, Court of Appeal, and the Regional High Courts,

(f) the admission, enrolment, suspension and removal of Attorneys-at-Law and the rules of conduct and etiquette for such Attorneys-at-Law,

(g) the attire of Judges, Attorneys-at-Law officers of Court and persons attending the Courts in Sri Lanka whether established by the constitution or by Parliament or by existing law,

(h) the manner in which panels of jurors may be prepared, and the mode of summoning, empanelling and challenging of jurors,

(i) proceedings of Fiscal and other ministerial officers of such Courts and the process of such Courts and the mode of executing the same,

(j) the binding effect of the decisions of the Supreme Court,

(k) all matters of practice and procedure including the nature and extent of costs that may be awarded, the manner in which such costs may be taxed and the stamping of documents in the Supreme Court Court of

Appeal, Regional High Courts, and Courts of First Instance not specially provided by or under any law

(2) Every rule made under this Article shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in such rule

(3) All rules made under this Article shall as soon as convenient after their publication in the Gazette be brought before Parliament for approval. Any such rule which is not so approved shall be deemed to be rescinded as from the date it was not so approved, but without prejudice to anything previously done thereunder

(4) the Chief Justice and any three Judges of the Supreme Court nominated by him may amend, alter or revoke any such rules of Court and such amendment, alteration or revocation of the rules will operate in the like manner as set out in the preceding paragraph with reference to the making of the rules of Court

(5) All rules made under Article 136 of the 1978 Constitution and in force immediately prior to the commencement of the Constitution shall, *mutatis mutandis*, be deemed to be rules made and approved under this Article. The rules relating to the Court of Appeal shall, *mutatis mutandis*, apply to the Regional High Courts in the exercise of their respective appellate, revisionary and writ jurisdictions, and to appeals from Regional High Courts to the Supreme Court and the Court of Appeal

(6) For the avoidance of doubts it is hereby declared that in the event of any inconsistency between a rule made under this Article and the provision of any law, the provisions of such law shall prevail

#### **148. Constitution of the Court of Appeal**

(1) The Court of Appeal shall consist of the President of the Court of Appeal and not less than six and not more than eleven Judges who shall be appointed as provided in Article 149

(2) The Court of Appeal shall ordinarily exercise its jurisdiction at Colombo

Provided however, that the Chief Justice may, from time to time when he deems it so expedient direct that the Court of Appeal shall hold its sittings and exercise its jurisdiction in any region, judicial zone or district specified in the direction

(3) The jurisdiction of the Court of Appeal may be exercised in different matters at the same time by the several Judges of the Court sitting apart

Provided that—

(a) its jurisdiction in respect of—

(i) judgements and orders of a Regional High Court pronounced at a trial at Bar, shall be exercised at least three Judges of the Court, and

(ii) other judgements and orders of a Regional High Court, shall be exercised by at least two Judges of the Court,

(b) its jurisdiction to try election petitions in respect of the election to membership of Parliament or a Regional Council, shall be exercised by the President of the Court of Appeal or any Judge of that Court nominated by the President or two or more of such Judges nominated by the President of whom such President may be one,

(c) its jurisdiction in respect of other matters shall be exercised by a single Judge of the Court unless the President of the Court of Appeal by general or special order, otherwise directs

(4) In the event of any difference of opinion between two Judges constituting the Bench, the matter shall be considered by a Bench of three Judges

(5) The judgement of the Court of Appeal shall, when it is not an unanimous decision, be the decision of the majority.

(6) The Registry of the Court of Appeal shall be in charge of an officer designated the Registrar of the Court of Appeal who shall be subject to the supervision, direction and control of the President of the Court of Appeal

(7) Subject to the provisions of this Constitution, Parliament may by law confer any additional jurisdiction and powers on the Court of Appeal and may vary or remove any jurisdiction or power vested in the Court of Appeal by any written law other than by this Constitution

## CHAPTER XVII

### THE INDEPENDENCE OF THE JUDICIARY

#### 149 Appointment, resignation and removal of Judges of the Supreme Court and Court of Appeal

(1) The Chief Justice shall be appointed by the President by warrant under his hand

(2) The President of the Court of Appeal and every other Judge of the Supreme Court and Court of Appeal shall be appointed by the President of the Republic by warrant under his hand after ascertaining the views of the Chief Justice

(3) The Chief Justice and every such Judge shall hold office during good behaviour, and shall not be removed except by an order of the President made after an address of Parliament supported by a majority of the total number of members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity

Provided that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament unless—

(a) notice of such resolution is signed by not less than one-third of the total number of members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity, and

(b) an inquiry has been held by a Committee consisting of three persons who hold or have held office as a Judge of the Supreme Court or the Court of Appeal and appointed by the Speaker to inquire into allegations of misbehaviour or incapacity made against such Judge, and such Committee has determined that a *prima facie* case of misbehaviour or incapacity has been established against such Judge. In the case of an inquiry in respect of the Chief Justice, the Committee shall consist of three persons each of whom hold, or have held, office as a Judge in the highest court of any Commonwealth country

(4) Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address including the procedure for the passing of such resolution, the holding of inquiries by a Committee of Parliament for the investigation and proof of the alleged misbehaviour and incapacity and the right of such Judge to appear before and be heard by such Committee in person or by representative

(5) Every person appointed to be or to act as Chief Justice, President of the Court of Appeal or a Judge of the Supreme Court or Court of Appeal shall not enter upon the duties of his office until he takes and subscribes or makes and subscribes before the President, the oath or the affirmation set out in the Schedule (*not reproduced*)

(6) A Judge of the Supreme Court or of the Court of Appeal shall be entitled to hold office until he reaches the age of sixty five years

Provided however any such Judge may opt to retire on completion of such period of service as would entitle him to the grant of a pension under the Minute on Pensions or resign his office by a writing under his hand addressed to the President, prior to reaching such age

#### **150. Salaries of Judges of the Supreme Court and the Court of Appeal**

(1) The salaries of the Judges of the Supreme Court and of the Court of Appeal shall be determined by Parliament and shall be charged on the Consolidated Fund

(2) The salary payable to, and the pension entitlement of, a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after his appointment

#### **151. Acting appointments**

(1) If the Chief Justice or the President of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office by reason of illness, absence from Sri Lanka or any other cause, the President shall appoint, another Judge of the Supreme Court, or of the Court of Appeal, as the case may be, to act in the office of Chief Justice, or President of the Court of Appeal, as the case may be, during such period

(2) If any Judge of the Supreme Court or of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office, by reason of illness, absence from Sri Lanka or any other cause, the President may appoint another person to act as a Judge of the Supreme Court, or Court of Appeal, as the case may be, during such period

**152. Performance or discharge of other duties or functions by Judges**

(1) A Judge of the Supreme Court or Court of Appeal may be required by the President of the Republic to perform or discharge any other appropriate duties or functions under any written law

(2) No Judge of the Supreme Court or Court of Appeal shall perform any other office (whether paid or not) or accept any place of profit or emolument, except as authorised by the Constitution or by written law or with the written consent of the President

(3) No person who had held office as a permanent Judge of the Supreme Court or of the Court of Appeal may appear, plead, act or practice in any court, tribunal or institution as an Attorney-at-Law at any time after retirement or resignation without the written consent of the President or accept any place of profit in the public service

**153. Regional High Court Judges**

(1) Every Judge of a Regional High Court shall be appointed by the President of the Republic by warrant under his hand after ascertaining the views of the Chief Justice, and shall be removable, and be subject to disciplinary control, by the President on the recommendation of the National Judicial Service Commission

(2) Every person appointed as a Judge of a Regional High Court shall not enter upon the duties of his office until he takes and subscribes, or makes and subscribes, the oath or affirmation set out in Schedule

(3) The Judge of a Regional High Court shall be entitled to hold office until he reaches the age of sixty-five years

Provided however that any such Judge may opt to retire on completion the period of service which entitles him for the grant of a pension under the Minute on Pensions, or resign from his office by writing under his hand addressed to the President, prior to reaching such age

(4) A Regional High Court Judge may be transferred by the President on the recommendation of the Chief Justice

**154. National Judicial Service Commission**

(1) There shall be a National Judicial Service Commission (in this Chapter referred to as the "Commission") appointed by the President of the Republic which shall consist of the Chief Justice who shall be the chairman and two other Judges of the Supreme Court, appointed by the President one of whom shall have been a judicial officer with original Court experience

(2) The quorum for any meeting of the Commission shall be two members

(3) The Commission shall have power to act notwithstanding any vacancy in its membership, and no act or proceeding by the Commission shall be deemed to be, invalid by reason only of any such vacancy or any defect in the appointment of a member

(4) A Judge appointed as a member of the Commission shall, unless he earlier resigns his office or is removed therefrom as hereinafter provided or

ceases to be a Judge of the Supreme Court, hold office for a period of five years from the date of his appointment, but shall be eligible for reappointment

(5) The President may for cause assigned remove from office any member of the Commission appointed by him

(6) The President may grant to any member of the Commission leave from his duties, and may appoint a person qualified to be a member of the Commission to be a temporary member for the period of such leave

(7) A member of the Commission may be paid such salary or allowance as may be determined by Parliament Any salary or allowance payable to a member shall be charged on the Consolidated Fund and shall not be diminished during his term of office The salary so payable shall be in addition to the salary or other emoluments attached to, and received from, his substantive appointment

(8) The Commission may—

(a) advise a Regional Judicial Service Commission whenever such Regional Judicial Service Commission seeks the advice of the Commission on any matter relating to the exercise by such Regional Judicial Service Commission of the power conferred on it by this Constitution,

(b) make rules regarding schemes for recruitment and procedure for the appointment of scheduled public officers,

(c) determine the principles and procedure to be followed by Regional Judicial Service Commissions in the exercise of the powers of appointment, transfer, dismissal and disciplinary control of Judicial Officers and scheduled regional public officers conferred on such Commissions by the Constitution, including formulation of schemes of recruitment, and principles to be followed in making promotions and transfers, relating to such judicial officers and scheduled regional public officers,

(d) determine the principles to be followed by Regional Public Service Commissions in giving directions to judicial officers as to the proper and efficient administration of the courts to which such judicial officers are appointed,

(e) make provision for such matters as are necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of such Commission

#### **155. Secretary to the National Judicial Service Commission**

There shall be a Secretary to the Commission who shall be appointed, for a period not exceeding three years, by the Judicial Service Commission The Secretary shall be appointed from among senior judicial officers appointed by Regional Judicial Service Commissions

### 156 Appointment, transfer, disciplinary control of judicial Officers and scheduled Public Officers

(1) The transfer from one Region to another, of judicial officers appointed by Regional Judicial Service Commissions, and notwithstanding anything to the contrary in Chapter XIX, the appointment, transfer, dismissal and disciplinary control of scheduled public officers, is vested in the Commission

(2) The Commission may, by order published in the Gazette, delegate to the Secretary to the Commission the power to make all transfers, other than transfers involving increase of salary, of scheduled public officers or to make acting appointments in such cases and subject to such limitations as may be specified in the order

(3) The Chairman of the Commission or any Judge of the Supreme Court, or Court of Appeal authorised by the Chairman of the Commission, shall have full power and authority to inspect any Court of First Instance or the records, registers or other documents maintained in such court and to hold such inquiry as may be necessary.

(4) In this Article—

“appointment” includes an acting or temporary appointment,

“scheduled public officer” means the Registrar of the Supreme Court the Registrar of the Court of Appeal, the Fiscal, or any public officer employed in the Registry of the Supreme Court, or the Court of Appeal, included in a category specified in the Fifth Schedule or in such other categories as may be specified by order made by the Minister in charge of the subject of Justice, and approved by Parliament and published in the Gazette

### 157. Interference with National Judicial Service Commission or Regional Judicial Service Commission, an offence

Every person who, otherwise than in the course of his duty directly or indirectly by himself or by any other person, in any manner or indirectly by himself or by any other person, in any manner whatsoever, influences or attempt to influence any decision of the Commission or of any member thereof, or a Regional Judicial Service Commission or of any member thereof, shall be guilty of an offence and shall on conviction, by the High Court after trial without a jury, be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment

Provided that nothing in this Article shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for any judicial office

### 158 Interference with Judiciary an offence

(1) Every Judge presiding officer, public officer or other person entrusted by law with judicial powers or functions under this Chapter or with similar functions under any law enacted by Parliament shall exercise perform such powers and functions without being subject to any direct

other interference proceeding from any other person except a superior court, tribunal, institution or other person entitled under law to direct or supervise such Judge, presiding officer, public officer or such other person in the exercise or performance of such powers or functions

(2) Every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial powers of functions or any Judge, presiding officer, public officer or such other person as is referred to in paragraph (1) of this Article, shall be guilty of an offence punishable by the High Court on conviction after trial without a jury with imprisonment of either description for a term which may extend to a period of one year or with fine or with both such imprisonment and fine and may, in addition, be disqualified for a period not exceeding seven years from the date of such conviction from being an elector and from voting at a Referendum or at any election of Members of Parliament or of Members of a Regional Council or any local authority or from holding any public office and from being employed as a public officer or as an officer in a regional Public Service

#### **159. Immunity of members of Commission**

No suit or proceedings shall lie against any member of the Commission for any act which in good faith is done or is purported to be done by him in the performance of his duties or discharge of his functions under the Constitution

#### **160. Fiscal**

There shall be a Fiscal who shall be the Fiscal for the whole Island and shall exercise supervision and control other Deputy Fiscal attached to all Courts

### **CHAPTER XVIII**

## **THE JUDICIARY—JURISDICTION OF THE SUPREME COURT AND COURT OF APPEAL**

### **THE SUPREME COURT**

#### **161. Jurisdiction of the Supreme Court with respect to Bills**

The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution

Provided that—

(a) in the case of a Bill described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution, the only question which the Supreme Court may determine is whether such Bill requires approval by the People at a Referendum by virtue of the provisions of Article 95,

(b) where the Cabinet of Ministers certifies that a Bill, which is described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution is

intended to be passed with the special majority required by Article 94 and submitted to the People by Referendum, the Supreme Court shall have and exercise no jurisdiction in respect of such Bill.

(c) where the Cabinet of Ministers certifies that a Bill which is not described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution, is intended to be passed with the special majority required by Article 96, the only question which the Supreme Court may determine is whether such Bill requires approval by the People at a Referendum by virtue of the provisions of Article 95 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 94, or

(d) where the Cabinet of Ministers certifies that any provision of any Bill which is not described in its long title as being for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution is intended to be passed with the special majority required by Article 96 the only question which the Supreme Court may determine is whether any other provisions of such Bill requires to be passed with the special majority required by Article 96 or whether any provision of such Bill requires the approval by the People at a Referendum by virtue of the provisions of Article 95 or whether such Bill is required to comply with the provisions of paragraph (1) and (2) of Article 94

#### 162. Ordinary exercise of Jurisdiction of Supreme Court with respect to Bills

(1) The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made, or such petition shall be filed, within one week of the Bill being placed on the Order Paper of Parliament, and a copy thereof shall at the same time be delivered to the Speaker. In this paragraph 'citizen' includes a body whether incorporated or unincorporated or, if not less than three-fourths of the members of such body are citizens.

(2) Where the jurisdiction of the Supreme Court has been so invoked no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made, or the expiration of a period of three weeks from the date of such reference or petition, whichever ever occurs first.

(3) The Supreme Court shall make and communicate its determination to the President and to the Speaker within three weeks of the making of the reference or the filing of the petition as the case may be.

#### 163. Special exercise of Jurisdiction of Supreme Court with respect to Bills

(1) In the case of a Bill which is, in the view of the Cabinet of Ministers, in the national interest, and bears an endorsement to that effect by the hands of the Secretary to the Cabinet of Ministers—

(a) the provisions of Article 89 (1) and Article 162, shall subject to the provisions of paragraph (2) of this Article, have no application,

(b) the President shall by a written reference addressed to the Chief Justice, require the special determination of the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. A copy of such reference shall at the same time be delivered to the Speaker,

(c) the Supreme Court shall make its determination within twenty-four hours (or such longer period not exceeding three days as the President may specify) of the assembling of the Court, and shall communicate its determination only to the President and the Speaker

(2) The provisions of paragraph (2) of Article 162 shall, *mutatis mutandis*, apply to such Bill

#### **164. Determination of Supreme Court in respect of Bills**

(1) The determination of the Supreme Court shall be accompanied by the reasons therefor, and shall state whether the Bill or any provisions thereof is inconsistent with the Constitution and if so, which provision or provisions of the Constitution

(2) Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state—

(a) whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 94, or

(b) whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 96, or

(c) whether such Bill or any provision thereof requires to be passed by the special majority required under the provisions of paragraph (2) of Article 96 and approved by the People at a referendum by virtue of the provisions of Article 95, and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent

(3) In the case of a Bill endorsed as provided in Article 163, if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article

(4) Where any Bill or any provision of any Bill has been determined to be inconsistent with the Constitution, such Bill or such provision shall not be passed except in the manner stated in the determination of the Supreme Court

Provided that it shall be lawful for such Bill to be passed after such amendment as would make the Bill cease to be inconsistent with the Constitution

**165. Power of review of Acts passed after commencement of the Constitution**

(1) The Supreme Court shall, on its jurisdiction being invoked under paragraph (2) and subject to the provisions of this Article, have sole and exclusive jurisdiction to determine whether any Act of Parliament passed after the commencement of this Constitution or any provision thereof is inconsistent with any provision of Chapter III of this Constitution and where it so determines, to declare that Act or provision void to the extent of that inconsistency, without prejudice to anything previously done thereunder

(2) The jurisdiction of the Supreme Court to determine any such question as aforesaid, may be invoked by any citizen by a petition in writing addressed to the Supreme Court filed within two years of the enactment of the Bill by Parliament. In this paragraph "citizen" includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens

(3) Save as otherwise provided in Article 161, 162, 163 and this Article, no court or tribunal created and established for the administration of justice or other institution, person or body of persons shall in relation to any Bill, have power or jurisdiction to inquire into or pronounce upon, the constitutionality of such Bill or its due compliance with the legislative process on any ground whatsoever

**166. Jurisdiction of the Supreme Court in respect of statutes of Regional Councils**

(1) The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether in statute passed by a Regional Council or any provision thereof is inconsistent with the Constitution

(2) The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid shall be invoked by a Regional Attorney-General by a petition in writing addressed to the Supreme Court, in every case where such Regional Attorney-General has communicated an opinion to the Governor, the Chief Minister and the Board of Ministers of the Region, prior to the passing of that statute, that the draft statute or any provision thereof is inconsistent with the Constitution, and the statute has been passed despite such opinion

(3) Where the jurisdiction of the Supreme Court has been so invoked in respect of a statute, such Statute shall be inoperative until the Supreme Court has made a determination thereon as to its consistency with the Constitution

(4) The Supreme Court shall make and communicate its determination to the President and to the Speaker of the Regional Council making such statute

(5) Whenever any question as to whether a statute passed by a Regional Council or any provision thereof is inconsistent with the Constitution arises in the course of any proceedings in any court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi-judicial functions such question shall forthwith be referred to the Supreme Court for determination. The Supreme Court may direct that further proceedings be stayed pending the determination of such question

(6) Where the Supreme Court determines that a Statute is inconsistent with any provision of the Constitution it may declare such statute or provision thereof void to the extent of such inconsistency

#### **167. Constitutional Jurisdiction in respect of the interpretation of the Constitution**

(1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution, and accordingly, whenever any such question arises in the course of any proceedings in any Court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi judicial functions, such question shall forthwith be referred to the Supreme Court for determination. The Supreme Court may direct that further proceedings be stayed pending the determination of such question

(2) The Supreme Court may, when determining such matter, also make any such consequential order as the circumstances of the case may require

#### **168. Jurisdiction regarding Fundamental and Language Rights**

(1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by State action including executive or administrative action, of any fundamental right or language right declared and recognised by Chapter III or Chapter IV or by judicial action by courts exercising original criminal jurisdiction, of a fundamental right declared and recognised under Article 10

(2) Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by State action including executive or administrative action, or by judicial action he may himself or by an Attorney-at-Law or a person or a body of persons in terms of Article 26, on his behalf, within three months thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused as the case may be by not less than two Judges of such Court

(3) Where in the course of hearing in any court, of an application for orders in the nature of a writ of habeas corpus, Certiorari, prohibition, mandamus or quo warranto, it appears to such court that there is *prima facie* evidence of an infringement or imminent infringement of the provisions of Chapter III or Chapter IV by a party to such application, such court shall forthwith refer such matter for determination by the Supreme Court

(4) The Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any petition or reference referred to in paragraphs (2) or (3) of this Article or refer the matter back to the court if, in its opinion, there is no infringement of a fundamental right or language right

Provided that in the case of an infringement of a fundamental right by judicial action no order for compensation or costs shall be made against a judicial officer who had acted bona fide and the Supreme Court may order the State to pay any compensation or costs

(5) Where at the hearing of a petition or reference referred to in paragraph (2) or (3) there are any disputed questions of fact, the Supreme Court may refer such questions to the Human Rights Commission or other appropriate body or person for inquiry and report

(6) The Supreme Court shall hear and finally dispose of any petition or reference under this Article as expeditiously as possible and in any event, not later than three months of the filing of the petition or the making of the reference, as the case may be. In computing the period of three months, any period taken for inquiry and report by the Human Rights Commission or any other body or person referred to in paragraph (5) shall be excluded

#### **169. Consultative Jurisdiction**

(1) If at any time it appears to the President of the Republic that a question of law or fact has arisen or is likely to arise which is of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, upon it he may refer that question to that Court for consideration and the Court may, after such hearing as it thinks fit, within the period specified in such reference or within such time as may be extended by the President, report to the President its opinion thereon

(2) Every proceeding under paragraph (1) of this Article shall be held in private unless the Court for special reasons otherwise directs

#### **170. Jurisdiction in respect of Validity of Referendum**

The Supreme Court shall have the power to hear and determine and make such orders as are provided for by law on any legal proceeding relating to the validity of a referendum

#### **171. Jurisdiction in respect of Parliamentary Privilege**

The Supreme Court shall have, according to law, the power to make cognisance of, and punish, any person for the breach of the privileges of Parliament

#### **172. Appellate Jurisdiction**

(1) The Supreme Court shall, subject to the Constitution, be the final Court of civil and criminal appellate jurisdiction for and within the Republic of Sri Lanka for the correction of all errors in fact or in law which shall be committed by the Court of Appeal in any case or by a Regional High Court in the exercise of its appellate or revisionary jurisdiction or by or any Court of first instance, tribunal or other institution from which a right of appeal direct to the Supreme Court has been provided by law and the judgements and orders of the Supreme Court shall in all cases be final and conclusive in all such matters

(2) The Supreme Court shall, in the exercise of its jurisdiction, have sole and exclusive cognisance by way of appeal, where any appeal lies in law to the Supreme Court, from any order, judgement, decree, or sentence made by—

(a) the Court of Appeal, or

(b) Regional High Court in the exercise of appellate or revisionary jurisdiction, and it may affirm, reverse or vary any such order, judgement, decree or sentence of the Court of Appeal, or a Regional High Court or of any Court of First Instance, tribunal or institution where a right of appeal direct to the Supreme Court has been provided by law, and may issue such directions to any Court of First Instance, tribunal or institution or order a new trial or further hearing in any proceedings as the justice of the case may require, and may also call for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by the Court of Appeal, a Regional High Court or any Court of First Instance

### 173. Right of Appeal

(1) An appeal shall lie to the Supreme Court from any final order, judgement, decree or sentence of—

(a) the Court of Appeal, or

(b) a Regional High Court in the exercise of appellate or revisionary jurisdiction,

in any matter or proceedings, whether civil or criminal, which involves a substantial question of law, if the Court of Appeal, or the Regional High Court, as the case may be, grants leave to appeal to the Supreme Court *ex mero motu* or at the instance of any aggrieved party to such matter or proceedings,

(2) The Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgement, decree, or sentence made by the Court of Appeal, or by a Regional High Court in the exercise of its appellate or revisionary jurisdiction, in any matter or proceedings, whether civil or criminal, where such Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court

Provided that the Supreme Court shall grant leave to appeal in every matter or proceedings in which it is satisfied that the question to be decided is of public or general importance

(3) An appeal shall lie directly to the Supreme Court on any matter and in the manner specifically provided for by any other law passed by Parliament

In this paragraph, "law" includes existing law

### 174. Review of Judgements and Orders of Supreme Court

The Chief Justice may, on application made within a reasonable time, by an aggrieved party direct that any judgement pronounced, or order made, by

the Supreme Court be reviewed by a fuller bench of Judges where the question involved relates to the interpretation of the Constitution and which question had not been considered in such judgement or order

#### **175. Right of the Attorney-General to be heard**

The Attorney-General shall be noticed and have the right to be heard in all proceedings in the Supreme Court in the exercise of its jurisdiction under Articles 161, 162, 163, 165, 166, 167, 168, 169, 170 and 171 of the Constitution

#### **176. Supreme Court to give Priority to the Hearing of Certain Matters**

The Supreme Court shall give priority to the hearing and determination of any matter in respect of which its jurisdiction under this Chapter is invoked and shall, subject to any stipulation as to time specified by Articles 161 to 172 in this Chapter, dispose of such matter as expeditiously as possible

### **THE COURT OF APPEAL**

#### **177. Jurisdiction of the Court of Appeal**

(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by a Regional High Court in the exercise of its original jurisdiction and by any Court of First Instance, tribunal or other institution and sole and exclusive cognisance, by way of appeal, revision and resitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such court, tribunal or other institution may have taken cognisance,

Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice

(2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain

#### **178. Powers in Appeal**

(1) The Court of Appeal may in the exercise of its jurisdiction affirm, reverse, correct or modify any order, judgement, decree or sentence according to law or it may give directions to such court, tribunal or other institution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit

(2) The Court of Appeal may further receive and admit new evidence additional to or supplementary of, the evidence already taken in such Court touching the matters at issue in any original case, suit, prosecution or action, as the justice of the case may require

**179. Powers to issue writs other than writs of *habeas corpus***

Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution, and grant and issue according to law, orders in the nature writs of certiorari, prohibition, mandamus and quo warranto against the Judge of any Court of First Instance or tribunal or other institution or any other person

Provided that Parliament may by law provide that in such category of cases as may be specified in such law, the jurisdiction conferred on the Court of Appeal by this Article shall be exercised by the Supreme Court and not by the Court of Appeal

**180. Powers to issue writs of *habeas corpus***

The Court of Appeal may grant and issue orders in the nature of writs of *habeas corpus* to bring up before such Court—

(a) the body of any person to be dealt with according to law, or

(b) the body of any person illegally or improperly detained in public or private custody,

and to discharge or remand any person so brought up or otherwise deal with such persons according to law

Provided that it shall be lawful for the Court of Appeal to require the body of such person to be brought up before the most convenient Court of First Instance and to direct the Judge of such Court to inquire into and report upon the acts of the alleged imprisonment or detention and to make such provision for the interim custody of the body produced as to such court shall seem right, and the Court of Appeal shall upon the receipt of such report, make order to discharge or remand the person so alleged to be imprisoned or detained or otherwise deal with such person according to law, and the Court of First Instance shall conform to, and carry into immediate effect, the order so pronounced or made by the Court of Appeal

Provided further, that if provision be made by law for the exercise by any court of jurisdiction in respect of the custody and control of minor children, then the Court of Appeal, if satisfied that any dispute regarding the custody of any such minor child may more properly be dealt with by such court, direct the parties to make application in that court in respect of the custody of such minor child

**181. Powers to Bring up and Remove Prisoners**

The Court of Appeal may direct—

(i) that a prisoner detained in any prison be brought before a Court-Martial or any Commissioners acting under the authority of any commission from the President of the Republic for trial or to be examined relating to any matters pending before any such Court-Martial or Commissioners respectively, or

(ii) that a prisoner detained in prison be removed from one custody to another for purpose of trial

**182. Power to grant Injunctions**

The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensue before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance

Provided that it shall not be lawful for the Court of Appeal to grant an injunction to prevent a party to any action in any court from appealing to or prosecuting an appeal to the Court of Appeal or to prevent any party to any action in any court from insisting upon any ground of action, defense or appeal, or to prevent any person from suing or prosecuting in any court, except where such person has instituted two separate actions in two different courts for and in respect of the same cause or action, in which case the Court of Appeal shall have the power to intervene by restraining him from prosecuting one or other of such actions as to it may seem fit

**183. Election Petitions**

The Court of Appeal shall have and exercise jurisdiction to try election petitions in respect of the election to the membership of Parliament or to a Regional Council in terms of any law for the time being applicable in that behalf

**184. Inspection of Records**

The Court of Appeal may, ex memo motu or on any application made, call for, inspect and examine any record pertaining to the exercise of original jurisdiction by a Regional High Court and any record of any Court of First Instance and in the exercise of its revisionary powers may make any order thereon as the interests of justice may require

*(Schedules not reproduced)*

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# 36

## CONSTITUTION OF SWEDEN

### CHAPTER 1 BASIC PRINCIPLES

1. (1) All public power in Sweden proceeds from the people
- (2) Swedish democracy is founded on freedom of opinion and on universal and equal suffrage. It shall be realized through a representative and parliamentary polity and through local self-government
- (3) Public power shall be exercised under the law
2. (1) Public power shall be exercised with respect for the equal worth of all and for the freedom and dignity of the individual
- (2) The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public administration to secure the right to work, housing and education, and to promote social care and social security and a good living environment
- (3) The public administration shall promote the ideals of democracy as guidelines in all sectors of society. The public administration shall guarantee equal rights to men and women and protect the private and family lives of the individual
- (4) Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own
3. The Instrument of Government, the Act of Succession and the Freedom of the Press Act are the fundamental laws of the Realm

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Note —The frequency of ordinary elections has been changed from 3 to 4 years by Law No 1469 of 1994 (see Chapter 3 Article 3)

4. (1) The Parliament is the foremost representative of the people.

(2) The Parliament enacts the laws, determines taxes and decides how public funds shall be used. The Parliament shall examine the government and administration of the country.

5. (1) The King or Queen who occupies the throne of Sweden in accordance with the Act of Succession shall be the Head of State.

(2) The provisions of this Instrument of Government which relate to the King shall relate also to the Queen if she is the Head of State.

6. The Government rules the country. It is responsible to the Parliament.

7. (1) There are primary and regional local government communes in Sweden. The decision-making power in the communes is exercised by elected assemblies.

(2) The communes may levy taxes in order to perform their tasks.

8. Courts of law exist for the administration of justice, and central and local government administrative authorities exist for the public administration.

9. Courts, public authorities and others performing functions within the public administration shall observe in their work the equality of all persons before the law and shall maintain objectivity and impartiality.

## CHAPTER 2

### FUNDAMENTAL RIGHTS AND FREEDOMS

1. (1) All citizens shall be guaranteed the following in their relations with the public administration:

1) freedom of expression: the freedom to communicate information and to express ideas, opinions and emotions, whether orally, in writing, in pictorial representations, or in any other way.

2) freedom of information: the freedom to obtain and receive information and otherwise acquaint oneself with the utterances of others,

3) freedom of assembly: the freedom to organize or attend any meeting for information purposes or for the expression of opinions or for any other similar purpose or for the purpose of presenting artistic work.

4) freedom to demonstrate: the freedom to organize or take part in any demonstration in a public place.

5) freedom of association: the freedom to unite with others for public or private purposes, and

6) freedom of worship: the freedom to practice one's own religion either alone or in company with others.

(2) In the case of the freedom of the press the provisions of the Freedom of the Press Act shall apply. That act also contains provisions concerning the right of access to public documents.

2. All citizens shall be protected in their relations with the public administration against all coercion to divulge an opinion in any political, religious, cultural or other similar connection. They shall furthermore be protected in their relations with the public administration against all coercion to participate in any meeting for the formation of opinion or in any demonstration or other expression of opinion or to belong to any political association, religious congregation or other association for opinions of the nature referred to in the first sentence.

3. (1) No record about a citizen in a public register may be based without his consent solely on his political opinions.

(2) Citizens shall be protected to the extent determined in detail by law against any infringement of their personal integrity resulting from the registration of information about them by means of electronic data processing.

4. There shall be no capital punishment.

5. All citizens shall be protected against corporal punishment. All citizens shall likewise be protected against torture or any medical influence or intervention for the purpose of extorting or suppressing statements.

6. All citizens shall be protected in their relations with the public administration against any physical violation also in cases other than those referred to in Articles 4 and 5. Citizens shall likewise be protected against physical search, house searches or other similar encroachments and against examination of mail or other confidential correspondence and against eavesdropping, telephone-tapping or recording of other confidential communications.

7. (1) No citizen may be deported or refused entry to Sweden.

(2) No citizen who is resident in Sweden or who has been resident in Sweden may be deprived of his citizenship unless he becomes at the same time a national of another state, at his express consent or because he has taken employment in the public service. It may however be prescribed that children under the age of eighteen shall have the same nationality as their parents or of one of their parents. It may furthermore be prescribed that, in pursuance of an agreement with a foreign state, a person who has been a national also of the other state from birth, and who is permanently resident there, shall forfeit his Swedish nationality at or after the age of eighteen.

8. All citizens shall be protected against deprivation of liberty in their relations with the public administration. They shall also in other respects be guaranteed freedom of movement within the Realm and freedom to depart Sweden.

9. (1) Where a public authority other than a court has deprived a citizen of his liberty for committing a criminal offence or because he is suspected of having committed such an offence, he shall be entitled to have the matter tested before a court of law without undue delay. This shall not, however, apply where the issue concerns the transference to Sweden of responsibility for executing a penal sanction involving deprivation of liberty which has been imposed in another state.

(2) If, for reasons other than those referred to in paragraph (1), a citizen has been forcibly taken into custody, he shall likewise be entitled to have the matter tested before a court of law without undue delay. In such a case, examination before a tribunal shall be equated with examination before a court of law, provided that the composition of the tribunal is governed by rules of law and it is laid down that the chairman of the tribunal must be currently, or shall have been previously, a permanent judge.

(3) If an examination under paragraphs (1) and (2) has not been referred to an authority which is competent according to the provisions laid down therein, the examination shall be carried out by a court of general jurisdiction.

10. (1) No penalty or other penal sanction may be imposed in respect of an act which was not subject to any penal sanction at the time it was committed. Neither may a more severe penal sanction be imposed than that which was prescribed when the act was committed. The provisions thus laid down with respect to penal sanctions apply likewise with respect to confiscation or any other special legal effects attaching to criminal offenses.

(2) No State taxes, charges, or fees may be levied except insofar as they were laid down in provisions which were in force when the circumstance arose which occasioned the liability for the tax, charge, or fee. Should the Parliament find that specific reasons so warrant, it may be provided under an Act of law that State taxes, charges, or fees shall be levied even although no such act had entered into force when the aforementioned circumstance occurred, provided that the Government or a Committee of the Parliament had submitted a proposal to this effect to the Parliament at the time concerned. For the purposes of the foregoing provision, any written communication from the Government to the Parliament announcing that a proposal of this nature will be forthcoming shall be equated with a formal proposal. The Parliament may furthermore prescribe that exceptions shall be made from the provisions of the first sentence if it considers that this is warranted by specific reasons connected with war, the danger of war or severe economic crisis.

11. (1) No court may be set up to try an offence already committed or for a particular dispute or otherwise for a particular case.

(2) Proceedings in the courts shall be open to the public.

12. (1) The rights and freedoms referred to in Article 1 (0 1)-(0 5), in Articles 6, 8, and 11 (2) may be restricted by law to the extent provided for in Articles 13-16. After authorization in law, they may be restricted by statutory order in the cases referred to in Chapter 8, Article 7 (1 7), and in Chapter 8, Article 10. Freedom of assembly and the freedom to demonstrate may similarly be restricted also in the cases referred to in Article 11 (1) second sentence.

(2) The restrictions referred to in paragraph (1) may be imposed only to achieve a purpose acceptable in a democratic society. The restriction may never exceed what is necessary, having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free

formation of opinion as one of the foundations of democracy No restriction may be imposed solely on grounds of political, religious, cultural or other such opinions

(3) Government bills of the nature referred to in paragraph (1), or Government bills for the amendment or repeal of such legislation, shall, if not rejected by the Parliament, be held in suspense for a period of not less than twelve months from the date on which the first report of a Parliament Committee on the Bill was submitted to the Chamber of the Parliament, on a motion by no fewer than ten members The above provision notwithstanding, the Parliament may approve the bill if no fewer less than five sixths of those voting concur

(4) Paragraph (3) shall not apply to any bill prolonging the life of legislation for a period of up to two years Nor shall the said paragraph apply to any bill concerned exclusively with—

1) prohibition of the disclosure of matters of which a person may have acquired knowledge in the public service, or in the performance of official duties, when secrecy is called for having regard to interests under Chapter 2, Article 2 of the Freedom of the Press Act,

2) house searches and similar intrusions, or

3) deprivation of liberty imposed as a penal sanction for a specific act or omission

(5) The Committee on the Constitution decides on behalf of the Parliament whether paragraph (3) is applicable in respect of a specific bill

13. (1) Freedom of expression and freedom of information may be restricted having regard to the security of the Realm, the national supply, public safety and order, the integrity of the individual, the sanctity of private life, or the prevention and prosecution of crime Freedom of expression may also be restricted in economic activities Freedom of expression and freedom of information may otherwise be restricted only where particularly important reasons so warrant

(2) In judging what restrictions may be made by virtue of paragraph (1) particular regard shall be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters

(3) The issuing of rules and regulations which govern in detail a particular manner of disseminating or receiving information without regard to its content shall not be deemed to restrict freedom of expression or freedom of information

14. (1) Freedom of assembly and the freedom to demonstrate may be restricted for the purpose of preserving public safety and order at the meeting or demonstration, or having regard to the circulation of traffic These freedoms may otherwise be restricted only out of regard for the security of the Realm or for the purpose of combating an epidemic

(2) Freedom of association may be restricted only in respect of organizations whose activities are of a military nature or the like, or which involve the persecution of a population group of a particular race, skin color, or ethnic origin

15. No Act of law or other statutory instrument may entail the discrimination of any citizen because he belongs to a minority on grounds of race, skin color, or ethnic origin

16. No Act of law or other statutory instrument may entail the discrimination of any citizen on grounds of sex, unless the relevant provision forms part of efforts to bring about equality between men and women or relates to compulsory military service or any corresponding compulsory national service.

17. Any trade union or employer or association of employers shall be entitled to take strike or lock-out action or any similar measure unless otherwise provided by law or arising out of an agreement

18. Every citizen whose property is requisitioned by means of an expropriation order or by any other such disposition shall be guaranteed compensation for his loss on the bases laid down in law

19. Authors, artists and photographers shall own the rights to their works in accordance with provisions laid down in law

20 (1) A foreigner within the Realm shall be equated with a Swedish citizen in respect of—

1) protection against all coercion to participate in any meeting for the formation of opinion or in any demonstration or other expression of opinion, or to belong to any religious congregation or other association (Article 2, second sentence),

2) protection of personal integrity in connection with electronic data processing (Article 3 (2)),

3) protection against capital punishment, corporal punishment and torture and against medical intervention aimed at extorting or preventing statements,

4) the right to have any deprivation of liberty on account of a criminal offence or on grounds of suspicion of having committed such an offence tested before a court of law (Article 9 (1) and (3)),

5) protection against retroactive penal sanctions and other retroactive effects of criminal acts and against retroactive taxes, charges or fees (Article 10),

6) protection against the establishment of a court to try a particular case (Article 11 (1)),

7) protection against discrimination on grounds of race skin color ethnic origin or sex (Articles 15 and 16),

8) the right to take strike or lock-out action (Article 17), and

9) the right to compensation in cases of expropriation or other such disposition (Article 18)

(2) Unless otherwise provided by special rules of law, a foreigner within the Realm shall be equated with a Swedish citizen also in respect of

1) freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate, freedom of association, and freedom of worship (Article 1);

2) protection against all coercion to divulge an opinion (Article 2, first sentence),

3) protection against physical violations also in cases other than those referred to in Articles 4 and 5, against physical search, house searches, or other similar intrusions, and against violations of confidential communications (Article 6),

4) protection against deprivation of liberty (Article 8, first sentence),

5) the right to have any deprivation of liberty for reasons other than a criminal offence or suspicion of having committed such an offence tested before a court (Article 9 (2) and (3)),

6) public court proceedings (Article 11 (2)),

7) protection against violations on grounds of opinion (Article 12 (2), third sentence), and

8) the rights of authors, artists, and photographers to their works

(3) With respect to the special provisions referred to in paragraph (2), the provisions of Article 12 (3), (4), first sentence, and (5) shall apply

## CHAPTER 3

### THE PARLIAMENT

1. (1) The Parliament is appointed by free, secret and direct elections

(2) The Parliament consists of one chamber comprising three hundred and forty-nine members. Alternates shall be appointed for all members

2. (1) Every Swedish citizen residing in Sweden is entitled to vote in Parliament elections. Provisions are laid down in law regarding the voting rights of Swedish citizens who are not resident in Sweden. No one who has not attained the age of 18 years on or before election day is entitled to vote

(2) Any question of whether a right to vote exists under paragraph (1) shall be determined on the basis of a voters' roll drawn up before the election

3. Ordinary elections for the Parliament shall be held every fourth year

4. (1) The Government may order an extra election to be held between ordinary elections. Extra elections shall be held within three months of the issue of such an order

(2) After an election for the Parliament has been held, the Government is debarred from issuing an order for an extra election until three months have elapsed from the first meeting of the newly-elected Parliament. Nor may the Government issue an order for an extra election while ministers retain their posts, after having all been formally discharged, pending the assumption of office by a new Government

(3) Provisions concerning an extra election in a particular case are set forth in Chapter 6, Article 3

5. (1) A newly-elected Parliament assembles on the fifteenth day after election day but no sooner than the fourth day after the result of the election has been declared

(2) Each election is valid for the period running from the day on which the newly-elected Parliament convenes until the Parliament elected next thereafter convenes. This period is the electoral period of the Parliament

6. (1) Sweden is divided into constituencies for the purpose of elections to the Parliament

(2) The Parliament is made up of three hundred and ten permanent constituency seats and thirty-nine adjustment seats

(3) The permanent constituency seats are distributed among the constituencies on the basis of a calculation of the relationship between the number of those entitled to vote in each constituency and the total number of persons entitled to vote in the entire country. This distribution between constituencies is fixed for three years at a time

7. (1) The seats are distributed between parties. Party is understood to mean any association or group of voters which appears in an election under a specific designation

(2) Only a party which receives at least four per cent of the votes cast throughout the whole of the country is entitled to share in the distribution of seats. A party which receives fewer votes however participates in the distribution of the permanent constituency seats in any constituency where it receives at least twelve per cent of the votes cast

8. (1) The permanent constituency seats in each constituency are distributed proportionately between the parties on the basis of the result of the election in that constituency

(2) The adjustment seats are distributed between the parties in such a way that the distribution of all the seats in the Parliament, other than those permanent constituency seats which have been allocated to a party with less than four per cent of the votes cast, is proportionate to the total number of votes cast respectively for the participating parties in the whole of the country. If, in the distribution of the permanent constituency seats, a party obtains more seats than correspond to the proportional representation for that party in the Parliament, then that party and the permanent constituency seats which it has obtained shall be disregarded in the distribution of the adjustment seats. After the adjustment seats have been distributed between the parties, they are allocated to constituencies

(3) The odd number method is used to distribute the seats between parties with the first divisor adjusted to 1.1

9. One member and one or more alternates for that member shall be appointed for each seat a party obtains

10. Only a person who is qualified to vote can be a member of the Parliament or an alternate member of the Parliament

11. (1) Appeals against elections for the Parliament may be lodged with an Election Review Committee appointed by the Parliament. A person who has been elected a member of the Parliament shall exercise his function regardless of any such appeal. If the result of the election is revised, a new member takes his seat as soon as the revised result has been announced. The foregoing applies equally to alternates.

(2) The Election Review Committee comprises a chairman, who must be currently, or have been previously, a permanent judge and who must not be a member of the Parliament, and six other members. The members are elected after each ordinary election, as soon as the result of the election becomes final, and serve until new elections for the Committee have been held. There is no right of appeal against a decision of the Committee.

12. Further provisions regarding matters under Articles 2 to 11 and regarding the appointment of alternates for the members of the Parliament shall be laid down in the Parliament Act or other statute law.

## CHAPTER 4

### THE BUSINESS OF THE PARLIAMENT

1. The Parliament shall convene in session every year. Sessions shall be held in Stockholm, unless otherwise decided by the Parliament, or by the Speaker, having regard to the safety or liberty of Parliament.

2. The Parliament shall designate a Speaker and a First, Second, and Third Deputy Speaker from among its members for each electoral period.

3. (1) The Government and every member of the Parliament is entitled, in accordance with more detailed provisions in the Parliament Act, to introduce proposals on any matter which comes within the jurisdiction of the Parliament unless otherwise provided in the present Instrument of Government.

(2) The Parliament elects committees from among its members, in accordance with provisions laid down in the Parliament Act, among them a Committee on the Constitution, a Committee on Finance and a Committee on Taxation. Any matter raised by the Government or by a member of the Parliament shall be considered by a committee before being finally decided upon, unless otherwise provided in the present Instrument of Government.

4. When a matter is raised for decision in the Chamber, each member of the Parliament and each member of the Government is entitled to state his opinion in accordance with the more detailed provisions laid down in the Parliament Act. Provisions concerning grounds for disqualification are contained in the Parliament Act.

5. When a vote is taken in the Parliament, the opinion in which more than half of those present and voting concur shall constitute the decision of the Parliament, unless otherwise specifically provided in the present

Instrument of Government or, in the case of matters relating to Parliament procedure, in a main provision of the Parliament Act. Provisions regarding the procedure to be followed in the case of a tied vote are laid down in the Parliament Act.

6. Any member of the Parliament and any alternate for such a member may fulfil his mandate as a member notwithstanding any official duty or other similar obligation which may be incumbent upon him.

7. (1) No member of the Parliament or alternate for such a member may resign his mandate without the Parliament's consent.

(2) When grounds exist, the Election Review Committee shall examine on its own initiative whether a particular member or alternate is competent under the provisions of Chapter 3, Article 10. Any person declared incompetent is relieved of his mandate thereby.

(3) A member or alternate member may be relieved of his mandate in cases other than those referred to in paragraph (2) only if, by reason of a criminal act, he has proved himself manifestly unfit for the position. Any decision to this effect shall be taken by a court of law.

8. (1) No one may bring an action against any person who holds a mandate, or has held a mandate, as a member of the Parliament, deprive him of his liberty, or prevent him from travelling within the country, on account of his actions or statements in the fulfilment of his mandate, unless the Parliament has given its consent by means of a decision in which no fewer than five sixths of those present and voting have concurred.

(2) If, in any other case, a member of the Parliament is suspected of having committed a criminal act, the relevant provisions of law relating to arrest, detention or remand are applicable only if he admits guilt or was caught in the act, or if the minimum penalty for the crime is not less than two years' imprisonment.

9. (1) While a member of the Parliament is acting as Speaker of the Parliament or is a member of the Government, his mandate as a member of the Parliament shall be exercised by an alternate member. The Parliament may prescribe in the Parliament Act that an alternate member shall replace a member of the Parliament while the latter is on leave of absence.

(2) The provisions of this chapter, Article 6 and 8 (1) regarding protection with respect to the exercise of a mandate as a member of the Parliament apply in like manner to the Speaker and his mandate.

(3) The provisions relating to a member of the Parliament shall apply also to an alternate exercising a mandate as member.

10. Additional provisions concerning the business of the Parliament are laid down in the Parliament Act.

## **CHAPTER 5**

### **THE HEAD OF STATE**

1. The Head of State shall be kept informed by the Prime Minister concerning the affairs of the Realm. When so required the Government shall convene in a special Cabinet meeting under the presidency of the Head of State.

2. (1) Only a person who is a Swedish citizen and has attained the age of twenty-five years may serve as Head of State. The Head of State may not at the same time be a member of the Government or hold a mandate as Speaker or as a member of the Parliament.

(2) The Head of State shall consult the Prime Minister before travelling abroad.

3. If by reason of illness, foreign travel, or any other cause the King is prevented from carrying out his duties, then that member of the Royal Family under the valid order of succession who is not prevented therefrom shall take over and perform the duties of the Head of State in the capacity of temporary Regent.

4. (1) Should the Royal Family become extinct, the Parliament shall appoint a Regent to perform the duties of Head of State until further notice. The Parliament shall at the same time appoint a Deputy Regent.

(2) The same applies if the King dies or abdicates and the heir to the throne has not yet attained the age of twenty-five years.

5. If the King has been continuously prevented for a period of six months from carrying out his duties, or has failed to carry them out, the Government shall notify the matter to the Parliament. The Parliament shall decide whether the King shall be deemed to have abdicated.

6. (1) The Parliament may appoint someone, on the Government's recommendation, to serve as Temporary Regent when no one competent under Article 3 or 4 is in a position to serve.

(2) The Speaker, or, if he is prevented from attending, one of the Deputy Speakers, shall serve as Temporary Regent, on the Government's recommendation, when no other competent person is in a position to serve.

7. The King cannot be prosecuted for his act or omissions. A Regent cannot be prosecuted for his act or omissions as Head of State.

## **CHAPTER 6**

### **THE GOVERNMENT**

1. The Government comprises the Prime Minister and other members of the Cabinet. The Prime Minister is appointed in the manner prescribed in Articles 2 to 4. The Prime Minister appoints the other members of the Cabinet.

2. (1) When a Prime Minister is to be appointed, the Speaker shall summon for consultation one or more representatives from each party group.

in the Parliament. The Speaker shall confer with the Deputy Speakers and shall then submit a proposal to the Parliament

(2) The Parliament shall proceed to vote on the proposal, no later than the fourth day thereafter, without preparation in committee. If more than half the members of the Parliament vote against the proposal, it is rejected. In all other circumstances it is approved

3. If the Parliament rejects the Speaker's proposal the procedure laid down in Article 2 shall be resumed. If the Parliament rejects the Speaker's proposal four times in succession, the procedure for appointing a Prime Minister is discontinued and resumed only after an election for the Parliament has been held. Unless ordinary elections must in any case be held within three months, an extra election shall be held within that same period

4. When the Parliament has approved a new Prime Minister, he shall inform the Parliament as soon as possible of the names of the members of his Government. Government changes hands thereafter at a special session of the Cabinet before the Head of State or, if he is prevented from being present before the Speaker. The Speaker shall always be summoned to such a session. The Speaker issues letters of appointment for the Prime Minister on behalf of the Parliament

5. If the Parliament declares that the Prime Minister or any other Minister no longer enjoys its confidence, the Speaker shall discharge the Minister concerned. When the Government is in a position to order an extra election, however, no decision shall be made to discharge the Minister if the Government issues an order for an extra election within one week from the declaration of no confidence

6. A Minister shall be discharged if he so requests: the Prime Minister by the Speaker, and any other member of the Government by the Prime Minister. The Prime Minister may also in other circumstances discharge another member of the Government

7. If the Prime Minister resigns or dies, the Speaker shall discharge the other members of the Government

8. If all the members of the Government have been discharged, they shall retain their posts until a new Government has taken office. If any Minister other than the Prime Minister has been discharged at his own request, he shall retain his post until a successor has taken office, if the Prime Minister so requests

9. (1) Only a person who has been a Swedish citizen for not less than ten years may be a Minister

(2) A Minister may not undertake any public or private employment, nor may he undertake any commission or perform any function which is liable to impair public confidence in him

10. In the absence of the Speaker, a Deputy Speaker shall assume the duties incumbent upon the Speaker under the present chapter

## CHAPTER 7

## THE BUSINESS OF THE GOVERNMENT

1. A Government Chancery shall exist for the preparation of Government business. This Chancery shall comprise ministries for different fields of activity. The Government distributes business between the ministries. The Prime Minister appoints the heads of the respective ministries from among the Ministers.

2. In the preparation of Government business the necessary information and opinions shall be obtained from the authorities concerned. Associations and private individuals shall be given an opportunity to express their views where necessary.

3. Decisions concerning Government business shall be taken at Cabinet meetings. Government business relating to the implementation of statutory instruments or special Government decisions within the armed forces may however be approved by the head of the ministry responsible for such matters, under the supervision of the Prime Minister and to the extent laid down in law.

4. The Prime Minister shall summon the other Ministers to attend Cabinet meetings and shall preside at such meetings. At least five Ministers shall be present at a Cabinet meeting.

5. At Cabinet meetings the head of a ministry presents business falling within the purview of his ministry. The Prime Minister may, however, order an item or group of items belonging to a particular ministry to be presented by a Minister other than the head of the ministry concerned.

6. Minutes shall be kept of Cabinet meetings. Dissenting opinions are to be recorded in the minutes.

7. Laws and other statutes, Bills for submission to the Parliament, and any other despatches of Cabinet decisions must be signed by the Prime Minister or another Minister on behalf of the Government in order to be valid. The Government may, however, decree that in particular cases an official may sign a Government despatch.

8. The Prime Minister may nominate one of the other Ministers to deputize for him in the event that he is unavoidably prevented from carrying out his duties himself. If a deputy has not been nominated by the Prime Minister, or if the deputy is also prevented from carrying out the duties of Prime Minister, these duties shall be assumed by that Minister among those in office who has been a member of the Government longest. Where two or more Ministers have been members of the Government for the same length of time the oldest shall have precedence.

## CHAPTER 8

## LAWS AND OTHER REGULATIONS

1. It follows from the provisions of Chapter 2 concerning Fundamental Rights and Freedoms that rules and regulations with a particular content may not be issued or may be issued only by means of an Act of law and that in certain cases draft legislation shall be dealt with in a particular way

2. (1) Provisions relating to the personal status of private subjects or to their mutual personal and economic relations shall be laid down by law

(2) These provisions include *inter alia*

1) provisions concerning Swedish citizenship,

2) provisions concerning the right to a family name, or concerning marriage and parenthood, wills and inheritance, or family affairs in general, and

3) provisions concerning the right to fixed and movable property, concerning contracts, and concerning companies, associations, communities and foundations

3. (1) Provisions concerning the relations between private subjects and the public administration which relate to obligations incumbent upon private subjects or which otherwise interfere in the personal or economic affairs of private subjects shall be laid down by law

(2) These provisions include *inter alia* provisions concerning criminal acts and the legal consequences of such acts, provisions concerning taxes payable to the State, and provisions concerning requisitions and other such dispositions

4. Provisions concerning consultative referenda throughout the whole of the country and concerning the procedure for holding referenda on matters concerning the fundamental laws shall be laid down by an Act of law

5. Principles governing changes in the division of the country into local government communes, and governing the organization and working methods of the communes and local taxation shall be laid down by law. Provisions governing the powers and responsibilities of the communes in other respects shall likewise be laid down by law

6. (1) When the Parliament is not in session, the Finance and Taxation Committees may, when authorized by a law relating to taxes other than taxes on income, wealth, inheritance or gifts and at the proposal of the Government determine tax levels or bring into force or abolish taxes referred to in such a law. Such authority may include the right to distinguish between different kinds of activities and different parts of the Realm. The Finance and Taxation Committees shall exercise their decision making right in joint session. Any decision shall be made on behalf of the Parliament by law

(2) Any law approved by the Finance and Taxation Committees under paragraph (1) shall be submitted by the Government to the Parliament within one month of the start of the next Parliament session. The Parliament shall examine the law and make its decision within one month thereafter

7. (1) Notwithstanding the provisions of Articles 3 and 5, the Government may, upon authorization by law, issue regulations by statutory instrument concerning matters other than taxes, provided that such regulations relate to any of the following matters

- 1) the protection of life, health, or personal safety,
- 2) the residence or sojourn in Sweden of foreign nationals,
- 3) the import or export of goods, money or any other assets, manufacture, transport and communications, the granting of credits, business activities, rationing, or the design of buildings, plants, or human settlements,
- 4) game-shooting, fishing, animal protection, or the conservation of nature and the environment,
- 5) the circulation of traffic or public order,
- 6) education and vocational training,
- 7) prohibitions against the disclosure of matters of which a person has acquired knowledge in the public service or while performing compulsory national service

(2) Authority of the nature referred to in paragraph (1) does not confer the right to issue provisions regarding legal effects of criminal acts other than the imposition of fines. The Parliament may also prescribe, in a law which contains an authorization under paragraph (1), legal effects other than the imposition of fines for contraventions of provisions laid down by the Government by virtue of such authority

8. The provisions of Articles 2, 3, or 5 notwithstanding, the Government may, upon authorization by law, issue regulations by statutory order regarding the granting of respites for meeting obligations

9. (1) The provisions of Article 3 notwithstanding, the Government may, upon authorization by law, issue regulations by statutory order concerning customs duties on the importation of goods

(2) Upon authorization by the Parliament, the Government or any local government commune may issue regulations concerning charges or fees which shall otherwise be issued by the Parliament under Article 3

10. In any matter referred to in Article 7 (1) or 9, the Government may, upon authorization by law, prescribe by statutory order that one or more provisions of such a law shall come into force or cease to apply

11. Where under the present chapter the Parliament authorizes the Government to issue regulations in a particular matter, the Parliament may authorize the Government in such a context to delegate the power to issue regulations in the matter to an administrative authority or commune. In such a case the Parliament may also commission an administrative authority under the Parliament to issue such regulations

12. Regulations issued by the Government by virtue of an authorization under the present Instrument of Government shall be submitted to the Parliament for examination and approval if the Parliament so decides

13. (1) In addition to what follows from Articles 7 to 10 the Government may issue by statutory order—

- 1) regulations concerning the enforcement of laws, and
- 2) regulations which under the fundamental laws are not to be issued by the Parliament

(2) The Government may not by virtue of paragraph (1) issue any regulations which concern the Parliament or its agencies. Nor may the Government by virtue of paragraph (1 2) issue regulations which concern local taxation

(3) The Government may delegate to a subordinate authority the task of issuing regulations in the relevant matter by means of a statutory order under paragraph (1)

14. The power conferred on the Government to issue regulations in a particular matter shall not prevent the Parliament from issuing regulations in the same matter by way of law

15. (1) A fundamental law shall be adopted by means of two decisions of identical wording. The second decision may not be taken until elections for the Parliament have been held throughout the country following the first decision, and the newly-elected Parliament has been convened. Not less than nine months shall furthermore elapse between the time when the matter was first submitted to the Chamber of the Parliament and the time of the election, unless the Constitutional Committee of the Parliament grants an exemption from this provision by means of a decision taken not later than the Committee stage, and in which no fewer than five sixths of the members concur

(2) The Parliament may not adopt as a decision in suspense any Bill on a fundamental law which conflicts with any other draft legislation of the same nature which is held in suspense, unless the Parliament at the same time rejects the Bill it first adopted

(3) A referendum shall be held on a decision held in suspense for an amendment of a fundamental law on a motion to this effect by no fewer than one tenth of the members of the Parliament, provided that no fewer than one third of the members vote in favor of the motion. Such a motion must be made within fifteen days from the date on which the Parliament adopted the Bill held in suspense. Such a motion shall not go for consideration by any Committee of the Parliament

(4) The referendum shall be held simultaneously with the election for the Parliament referred to in paragraph (1). All those entitled to vote in the election may declare in the referendum whether or not they accept the Bill on the fundamental law which is pending decision. The Bill shall be deemed to be rejected if the majority of those taking part in the referendum vote against the proposal, and if the number of voters exceeds half the number of those who registered valid votes in the election. In all other cases the Parliament shall take up the Bill for final consideration

16. The Parliament Act shall be adopted as prescribed in Article 15 (1), first and second sentences, and (2) It may also be adopted by means of a single decision, provided that it is approved by no fewer than three fourths of those present and voting and by more than half the members of the Parliament Supplementary provisions of the Parliament Act shall however be adopted in the same way as ordinary laws

17. No law shall be amended or repealed otherwise than by law Articles 15 and 16 apply *mutatis mutandis* with respect to any amendment or abrogation of a fundamental law

18. (1) A Law Council composed of Justices of the Supreme Court and of Justices of the Supreme Administrative Court shall exist to pronounce on draft legislation The opinion of the Law Council shall be solicited by the Government or, under provisions of the Parliament Act, by a Committee of the Parliament

(2) The opinion of the Law Council shall be solicited before the Parliament takes a decision on a fundamental law concerning the freedom of the press, on any Act of law limiting the right of access to public documents, on any Act of law under Article 3 (2), 12 (1), 17, 19, or 20 (2), or on any Act of law amending or repealing such an Act, on any Act of law on local government taxation, on any Act of law under Articles 2 or 3, and on any Act of law under Chapter 11, if such an Act is important to private subjects or is important from the point of view of public interest The foregoing provision shall not however apply, if obtaining an opinion from the Law Council would be without significance because of the nature of the matter, or would delay the handling of legislation in such a way as to cause serious detriment If the Government submits draft legislation to the Parliament for the making of an Act of law in any matter referred to in the first sentence, and the opinion of the Law Council has not previously been obtained, the Government shall at the same time present its reasons therefor to the Parliament Failure to obtain the opinion of the Law Council on draft legislation shall never prevent the application of the law

(3) The Law Council's scrutiny shall relate to—

1) the way in which the proposal relates to the fundamental laws and to the legal system in general,

2) the way in which the different provisions contained in the proposal relate to each other,

3) the way in which the proposal relates to the requirement for security before the law,

4) whether the proposal is framed in such a manner that the resulting law can be assumed to satisfy the above requirements, and

5) what problems are likely to arise in applying the law

(4) Further provisions concerning the composition and working methods of the Law Council shall be set forth by law

19. Any Act of law which has been adopted shall be promulgated by the Government without delay. An Act containing provisions concerning the Parliament or its agencies which shall not be laid down in a fundamental law or in the Parliament Act may, however, be promulgated by the Parliament. Laws shall be published as soon as possible. This applies equally to statutory instruments, unless otherwise laid down in law.

## CHAPTER 9 FINANCIAL POWER

1. Provisions concerning the right to approve taxes and charges or fees due the State are set out in Chapter 8.

2. (1) State funds may not be used in any way other than that determined by the Parliament.

(2) The Parliament approves the use of such funds for different purposes by adopting a budget in accordance with Articles 3 to 5. The Parliament may, however, decide that funds are to be employed in another manner.

3. (1) The Parliament shall adopt a budget for the next following fiscal year or, if special reasons so warrant, for another budgetary period. In this context, the Parliament shall estimate revenue and make appropriations for specified purposes. Decisions taken in this connection shall be incorporated in a national budget.

(2) The Parliament may decide that a particular appropriation within the national budget shall be made for a period other than the budget period.

(3) When adopting a budget under the present article, the Parliament shall take into account the need of funds for the defence of the Realm in time of war, danger of war, or other exceptional circumstances.

4. If the budget cannot be finally adopted in accordance with Article 3 before the start of the budget period, the Parliament, or, if the Parliament is not in session, the Finance Committee, shall decide as necessary on appropriations to cover the period until a budget is adopted for the budget period concerned.

5. The Parliament may revise its estimates of revenue for the current fiscal year, after appropriations already made, and make new appropriations in a supplementary budget.

6. The Government shall submit proposals for a national budget to the Parliament.

7. In conjunction with consideration of the budget or in other contexts, the Parliament may establish guidelines for a particular activity of the state covering a period in excess of that for which appropriations have been made for the activity concerned.

8. The funds and other assets of the State shall be at the disposal of the Government. This provision shall not, however, apply to assets which are intended for the Parliament or its agencies or which have been put under special administration by law.

9. The Parliament shall determine the principles for the administration and disposition of the property of the State to the extent that this is necessary. In this context, the Parliament may prescribe that measures of a particular nature may not be undertaken without the Parliament's consent.

10. The Government may not take up loans or otherwise assume financial obligations on behalf of the State without authority from the Parliament.

11. (1) The Finance Committee confers with the Minister appointed by the Government on negotiable matters affecting terms of employment applicable to state employees or which otherwise come within the scope of the Parliament to examine. The Committee approves agreements on such matters on the Parliament's behalf or, if the matter has been exempted from agreement, proposals for their regulation.

(2) In the case of employees of the Parliament or its agencies the provisions laid down in law apply instead of the provisions of paragraph (1).

(3) The provisions of paragraph (1) do not apply if the Parliament has decided otherwise in a particular case.

12. (1) The Bank of Sweden is the central bank of Sweden and is responsible for currency and credit policy. It shall also promote a sound and efficient payments system.

(2) The Bank of Sweden is an authority under the Parliament.

(3) The Bank of Sweden is administered by eight Trustees. Seven of the Trustees are elected by the Parliament. These Trustees elect a Trustee to act also as Governor of the Bank for a five-year period. The Trustees elected by the Parliament elect a chairman from among their number. This chairman may not exercise any other commission or hold any office within the executive direction of the Bank. Rules concerning the Parliament's election of Trustees, concerning the direction of the Bank of Sweden in other respects, and concerning its operations are laid down in the Parliament Act and elsewhere in law.

(4) A Trustee for whom the Parliament does not grant discharge of responsibility is thereby severed from his appointment. The Trustees elected by the Parliament may remove the chairman from office and the person who is a Trustee and the Governor of the Bank from his appointment.

13. The Bank of Sweden alone shall have the right to issue banknotes and to determine their pattern and design. Further provisions concerning the monetary and payments systems shall be laid down by law.

## CHAPTER 10

### RELATIONS WITH OTHER STATES

1. Agreements with other states or with international organizations shall be concluded by the Government.

2. (1) The Government may not conclude any international agreement binding upon the Realm without Parliament approval, if the agreement

presupposes the amendment or abrogation of a law or the enactment of a new law, or if it otherwise concerns a matter which is for the Parliament to decide

(2) If in a case under paragraph (1) a special procedure has been prescribed for the decision of the Parliament, the same procedure shall be followed in connection with the approval of the agreement

(3) Nor may the Government in cases other than cases under paragraph (1) without the approval of the Parliament conclude any international agreement which is binding upon the Realm, if the agreement is of major importance. The Government may, however, act without obtaining the Parliament's approval of the agreement if the interest of the Realm so requires. In such a case the Government shall confer instead with the Foreign Affairs Advisory Council before concluding the agreement

3. The Government may commission an administrative authority to conclude international agreements in matters in which such agreements do not require any action on the part of the Parliament or of the Foreign Affairs Advisory Council

4. The provisions of Articles 1 to 3 shall apply, *mutatis mutandis*, to the commitment of the Realm to any international obligation in any form other than an agreement and to any denunciation of an international agreement or obligation

5. (1) Any right of decision-making which is directly based on the present Instrument of Government and which purports at the laying down of prescriptions, the use of State property or the conclusion or denunciation of international treaties or commitments may be entrusted, to a limited extent, to an international organization for peaceful cooperation of which Sweden is a member or is to become a member or to an international court of law. No right of decision-making relating to matters concerning the enactment, amendment, or repeal of a fundamental law, of the Parliament Act or of the Act concerning elections for the Parliament, or which regards a limitation of any of the rights and freedoms referred to in Chapter 2 may be thus delegated. The provisions relating to the enactment of fundamental laws shall apply in respect of any decision concerning such delegation. If a decision in accordance with such provisions cannot be held in suspense, the Parliament may approve a delegation of the right of decision-making by a majority of no fewer than five sixths of those present and voting and no fewer than three fourths of the total membership of the Parliament

(2) Where it has been laid down in law that an international treaty shall have the force of Swedish law, the Parliament may prescribe by a decision taken in the order laid down in paragraph (1) that any future amendment to the treaty, which is binding upon the Realm, shall apply also within the Realm

(3) Any judicial or administrative function not directly based on the present Instrument of Government may be entrusted to another state, to an international organization or to a foreign or international institution or community by means of a decision of the Parliament. The Parliament may likewise authorize the Government or any other public authority to decide on

such a delegation of functions in a particular situation Where the function concerned involves the exercise of public authority, the Parliament's decision shall be taken by a majority of no fewer than three fourths of those present and voting. A decision to delegate a function of this nature may also be taken in the manner prescribed for the enactment of a fundamental law.

6. The Government shall keep the Foreign Affairs Advisory Council continuously informed of those matters relating to foreign relations which may be of importance to the Realm, and shall confer with the Council in these matters as often as is necessary. In all foreign policy matters of major importance, the Government shall if possible confer with the Council before making its decision.

7. (1) The Foreign Affairs Advisory Council comprises the Speaker and nine other members to be elected by the Parliament from among its members Further provisions concerning the composition of the Council are set forth in the Parliament Act.

(2) The Foreign Affairs Advisory Council is convened by the Government The Government is obliged to convene the Council if no fewer than four Council members ask for consultations to take place on a particular matter Meetings of the Council are presided over by the Head of State or, in his unavoidable absence, by the Prime Minister.

(3) A member of the Foreign Affairs Advisory Council and any person otherwise connected with the Council shall exercise caution in communicating to others what he has learnt in such a capacity. Whoever presides over a meeting of the Council may decide on an unconditional obligation to maintain silence

8. The head of the ministry responsible for foreign affairs shall be kept informed whenever a matter arises at another State authority which is of significance for relations with another state or international organization

9. (1) The Government may commit the country's defence forces, or any part of them, to battle in order to repel an armed attack upon the Realm Swedish armed forces may otherwise be committed to battle or sent to another country only if—

1) the Parliament has assented thereto.

2) it is permitted under a law which sets out the prerequisites for such action;

3) an obligation to take such action follows from an international agreement or obligation which has been approved by the Parliament

(2) No declaration of war may be made without the consent of the Parliament, except in the event of an armed attack against Sweden

(3) The Government may authorize the defence forces to use force in accordance with international law and custom to prevent a violation of Swedish soil in time of peace or during a war between foreign states

## CHAPTER 11

## JUDICIAL AND GENERAL ADMINISTRATION

1. (1) The Supreme Court is the highest court of general jurisdiction, and the Supreme Administrative Court is the highest administrative court. The right to have a case tried by the Supreme Court or by the Supreme Administrative Court may be restricted by law. A person may serve as a member of the Supreme Court or the Supreme Administrative Court only if that person has been appointed a permanent justice of that court.

(2) A court other than the Supreme Court or the Supreme Administrative Court must be established by law. Provisions prohibiting the establishment of a court for a particular case are laid down in Chapter 2, Article 2 (1).

(3) There shall be at least one permanent judge in any court under paragraph (2). However, with respect to courts which have been set up to try a definite group or definite groups of cases exceptions from this rule may be made by law.

2. Neither a public authority nor the Parliament may determine how a court shall adjudicate a particular case or how a court shall in other respects apply a rule of law in a particular case.

3. A legal dispute between private subjects may not be settled by an authority other than a court except by virtue of law. Provisions regarding judicial review of deprivation of liberty are laid down in Chapter 2, Article 9.

4. Provisions concerning the functions of the courts relating to the administration of justice, the principal features of the organization of the courts, and legal proceedings shall be laid down by law.

5. (1) A person appointed a permanent judge may be removed from his post only—

1) if through a criminal act or through gross or repeated neglect of his official duties he has shown himself to be manifestly unfit to hold the office, or

2) if he has reached the relevant age of retirement or is otherwise under a legal obligation to retire on pension.

(2) If a permanent judge has been removed from his office through a decision made by an authority other than a court he shall be entitled to call upon a court to review the decision. This provision shall likewise apply to any decision as a result of which a permanent judge has been suspended or ordered to undergo medical examination.

(3) If organizational reasons so require, a person appointed a permanent judge may be transferred to any other judicial office of equal status.

6. (1) The Justice Chancellor, the Chief Public Prosecutor, the central administrative boards, and the provincial governments are subordinate to the Government. Any other administrative authority of the State is subordinate to the Government, unless it is an authority under the Parliament under the terms of the present Instrument of Government or under the terms of some other law.

(2) Administrative functions may be entrusted to a local government commune

(3) Administrative functions may be entrusted to a company, an association, a community, a foundation, or a private individual. If such a function involves the exercise of public authority, it shall be entrusted to such a body or person by law

7. Neither any public authority, nor the Parliament, nor the decision making body of a local government commune may determine how an administrative authority shall make its decision in a particular case concerning the exercise of public authority against a private subject or against a commune, or concerning the application of law

8. No judicial or administrative function may be performed by the Parliament except insofar as this is provided for by a fundamental law or by the Parliament Act.

9. (1) Appointments to a post in a court or in an administrative authority under the Government shall be made by the Government or by an authority designated by the Government

(2) When making appointments to posts within the State administration attention shall be directed only to objective factors such as merit and competence

(3) Only a Swedish citizen may hold or exercise the functions of a judicial office, an office directly subordinate to the Government, a post or commission as head of an authority directly subordinate to the Parliament or to the Government, or as a member of such an authority or its board, a post in the Government Chancery immediately subordinate to a Minister or a post as a Swedish envoy. Also in other cases no one who is not a Swedish citizen may hold an office or carry out a commission, if the holder of such an office or commission is elected by the Parliament. Swedish nationality may otherwise be made a prerequisite of the right to hold or exercise an office or commission under the State or a local authority only if laid down in law or under conditions prescribed by law

10. Fundamental provisions concerning the legal status of civil servants in respects other than those covered in the present Instrument of Government shall be set forth by law

11. Judicial review of a case which is closed, and reinstatement of lapsed time, shall be granted by the Supreme Administrative Court when the case concerns a matter in respect of which the Government, an administrative court or an administrative authority is the highest instance. In all other cases, judicial review or reinstatement of lapsed time is granted by the Supreme Court or, insofar as this is prescribed by law, by another court which is not an administrative court

12. (1) The Government may grant exceptions from any provision of a statutory order, or from a provision issued by virtue of a decision by the Government, unless otherwise provided in an Act of law or in a decision on a budget appropriation

(2) Further details concerning judicial review of a closed case and reinstatement of lapsed time may be laid down in law

13. (1) The Government may by exercising mercy remit or reduce a penal sanction or other legal effect of a criminal act, and may remit or reduce any other similar intervention affecting the person or property of a private subject made by a public authority

(2) Where exceptional reasons so warrant, the Government may order that no further action be taken to investigate or prosecute a criminal act

14. If a court or any other public body considers that a provision conflicts with a provision of a fundamental law or with a provision of any other superior statute, or that the procedure prescribed was set aside in any important respect when the provision was introduced, the provision may not be applied. However, if the provision has been approved by the Parliament or by the Government, it may be set aside only if the fault is manifest

## CHAPTER 12

### PARLIAMENTARY CONTROL

1. The Committee on the Constitution shall examine Ministers' performance of their duties and the handling of Government business. The Committee is entitled for this purpose to have access to the records of the decisions made in Cabinet matters and to all documents pertaining to such matters. Any other Parliament Committee and any member of the Parliament shall be entitled to raise in writing with the Committee on the Constitution any issue concerning a Minister's performance of his duties or concerning the handling of Cabinet business

2. It shall be incumbent upon the Committee on the Constitution to communicate to the Parliament, whenever reasons so warrant but at least once a year, any observations which the Committee may find worthy of attention in connection with its scrutiny. The Parliament may make representations to the Government as a result

3. A person who is currently or has been previously a Minister may be held accountable for a criminal act committed in the performance of his official duties only if he has grossly neglected his duties thereby. Such impeachment is a matter for decision by the Committee on the Constitution and the case shall be tried by the Supreme Court

4. (1) The Parliament may declare that a particular Minister does not enjoy the confidence of Parliament. Such a declaration of no confidence requires the concurrence therein of more than half the members of the Parliament

(2) A motion for a declaration of no confidence shall be taken up for consideration only if it is introduced by no fewer than one tenth of the members of the Parliament. It shall not be taken up for consideration during the period between the date on which an ordinary election has been held or an extra election has been declared and the Parliament elected in such an

election has convened A motion which concerns a Minister holding office under the terms of Chapter 6, Article 8 after having been discharged may not be taken up for consideration in any circumstances

(3) A motion calling for a declaration of no confidence shall not be prepared in committee

5. Under provisions laid down in the Parliament Act, any member of the Parliament may submit an interpellation or put down a question for a Minister in any matter concerning the Minister's performance of his duties

6. (1) The Parliament shall elect one or more Ombudsmen to supervise under instructions laid down by the Parliament the application in public service of laws and other statutes An Ombudsman may initiate legal proceedings in the cases indicated in these instructions

(2) An Ombudsman may be present at the deliberations of a court or an administrative authority and shall have access to the minutes and other documents of any such court or authority Any court or administrative authority and any State or local government official shall provide an Ombudsman with such information and reports as he may request A similar obligation shall also be incumbent on any other person coming under the supervision of the Ombudsman A public prosecutor shall assist an Ombudsman on request

(3) Further provisions concerning the Ombudsmen are set forth in the Parliament Act

7. (1) The Parliament shall elect auditors from among its members to examine the activities of the State The Parliament may decide that the auditors' scrutiny shall extend also to other activities The Parliament draws up standing orders for the auditors

(2) Under provisions set forth in law, the auditors may demand such documents, data, and reports as are necessary for their scrutiny

(3) Further provisions concerning the auditors are set out in the Parliament Act

8. (1) Proceedings under penal law on account of a criminal act committed by a member of the Supreme Court or the Supreme Administrative Court in the exercise of his official functions shall be brought before the Supreme Court by a Parliamentary Ombudsman or by the Justice Chancellor

(2) The Supreme Court shall likewise examine and determine whether, in accordance with the provisions laid down in this connection, a member of the Supreme Court or the Supreme Administrative Court shall be removed from office or suspended from duty, or shall be obliged to undergo a medical examination Proceedings to this effect shall be initiated by a Parliamentary Ombudsman or by the Justice Chancellor

## CHAPTER 13

## WAR AND DANGER OF WAR

1. If the country is at war or exposed to the danger of war, and the Parliament is not in session, the Government or the Speaker shall convene the Parliament. Whoever issues the notice convening the Parliament may decide that the Parliament shall meet at a place other than Stockholm. If the Parliament is in session, the Parliament, or the Speaker, may determine where it shall meet.

2. (1) If the country is at war or exposed to the danger of war, a War Delegation appointed from among the members of the Parliament shall replace the Parliament if circumstances so warrant.

(2) If the country is at war, the order appointing the War Delegation to replace the Parliament is issued by the members of the Foreign Affairs Advisory Council according to detailed provisions set forth in the Parliament Act. If possible, the Prime Minister is to be consulted before the order is issued. If war conditions prevent the Council from convening, the order is to be issued by the Government. If the country is exposed to the danger of war, the order shall be issued by the members of the Foreign Affairs Advisory Council and the Prime Minister jointly. Such an order shall be effected only if the Prime Minister and six members of the Council are in agreement thereon.

(3) The War Delegation and the Government may decide, either jointly or severally, that the Parliament shall resume its functions.

(4) Rules regarding the composition of the War Delegation are set forth in the Parliament Act.

3. (1) While the War Delegation is acting in the Parliament's place, it shall exercise the powers otherwise vested in the Parliament. It shall not, however, take decisions under Article 12 (1), (2) or (4).

(2) The War Delegation determines its own working methods.

4. If the country is at war, and if as a result the Government cannot carry out its duties, the Parliament may decide on the formation of a Government and may determine the Government's working methods.

5. (1) If the country is at war, and if in consequence thereof neither the Parliament nor the War Delegation can carry out its duties, the Government shall assume these duties to the extent it considers necessary to protect the Realm and bring hostilities to an end.

(2) The Government may not by virtue of paragraph (1) enact, amend or repeal any fundamental law, the Parliament Act, or any act concerning elections for the Parliament.

6. (1) If the country is at war or is exposed to the danger of war, or if such exceptional conditions prevail as result from war or danger of war to which the country has been exposed, the Government may, with authority in law, issue regulations by statutory order in a particular matter which shall otherwise be set forth by law in accordance with fundamental law. If necessary in any other case having regard to defence preparations, the Government

may, with authority in law, decide by statutory order that any provisions set forth by law which relate to requisition or other such disposition shall be brought into force or cease to apply

(2) In any law granting authority of the kind referred to in paragraph (1), the conditions under which the authority may be used shall be scrupulously defined. Such authority does not empower the Government to enact, amend, or repeal a fundamental law, the Parliament Act, or any act concerning elections for the Parliament.

7. In the event that the country is at war or is exposed to the imminent danger of war the provisions of Chapter 2, Article 12 (3) shall not apply. The same applies in any other circumstances in which the War Delegation is acting in the Parliament's place.

8. If the country is at war or is exposed to the imminent danger of war, the Government may decide, upon authorization by the Parliament, that a function which devolves on the Government by virtue of a fundamental law shall be performed by some other authority. Such authority may not include any power under Article 5 or 6, unless it relates solely to a decision to the effect that a law in a particular matter shall begin to apply.

9. The Government may agree a cease-fire without seeking the approval of the Parliament and without consulting the Foreign Affairs Advisory Council, if deferment of the agreement would endanger the country.

10. (1) Neither the Parliament nor the Government may make decisions in occupied territory. Nor may any power vested in a person in his capacity as a member of the Parliament or as a member of the Government be exercised in such territory.

(2) It shall be incumbent on any public body in occupied territory to act in the manner which best serves the defence effort and resistance activities, the protection of the civilian population and Swedish interests at large. In no circumstances may any public body make any decision or take any action which imposes on any citizen of the Realm the duty to render assistance to the occupying power in contravention of international law.

(3) Elections for the Parliament or for decision-making local government assemblies may not be held in occupied territory.

11. If the country is at war, the Head of State should accompany the Government. Should he find himself in occupied territory or separated from the Government, he shall be deemed to be prevented from carrying out his duties as Head of State.

12. (1) If the country is at war, elections for the Parliament may be held only at the Parliament's decision. If the Realm is exposed to the danger of war when ordinary elections are due to be held, the Parliament may decide to defer the elections. Such a decision shall be reconsidered within one year and at intervals thereafter not exceeding one year. Decisions under the present paragraph shall be effective only if no fewer than three fourths of the total membership of the Parliament concur therein.

(2) If any part of the country is under foreign occupation when elections are to be held, the Parliament shall approve whatever modification of the provisions of Chapter 3 is called for. No exceptions may however be made from the provisions of Chapter 3, Article 1 (1), 2, 6 (1), or 7 to 11 by reference to the country or Realm in the provisions of Chapter 3. Article 6 (1), 7 (2) or 8 (2) shall apply instead to that part of the country for which elections are to be held. No fewer than one-tenth of all the seats shall be adjustment seats.

(3) Ordinary elections not held at the time prescribed in consequence of the provisions of paragraph (1) shall be held as soon as possible after the war ends or the danger of war subsides. It shall be incumbent upon the Government and the Speaker, either jointly or severally, to ensure that the necessary measures are taken.

(4) If, in consequence of the provisions of the present Article, an ordinary election has been held at a time other than that at which it should otherwise have been held, the Parliament shall set the date of the next following ordinary election for that month during the third or fourth year following the first-named election in which an ordinary election was due to be held in accordance with the Parliament Act.

13. If the country is at war or exposed to the danger of war, or if such exceptional conditions prevail as result from war or the danger of war, the decision-making powers of the local government assemblies shall be exercised in the manner prescribed by law.

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# 37

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## CONSTITUTION OF SWISS CONFEDERATION (SWITZERLAND)

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{Adopted on 29 May 1874}

### PREAMBLE

In the Name of Almighty God, the Swiss Confederation, with the intent of strengthening the alliance of the Confederates and of maintaining and furthering the unity, strength and honour of the Swiss nation, has adopted the following Federal Constitution

### CHAPTER I

#### GENERAL PROVISIONS

##### 1. Cantons

Together, the peoples of the 23 sovereign Cantons of Switzerland united by the present alliance, to wit

Zurich, Berne, Lucerne, Uri, Schwyz, Unterwalden (Upper and Lower), Glarus, Zug, Fribourg, Soleure, Basle (City and Rural), Schaffhausen, Appenzell (both Rhodes), St Gall, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchatel, Geneva and Jura, form the Swiss Confederation

##### 2. Goals

The aim of the Confederation is to preserve the outward independence of the fatherland, to maintain internal peace and order, to protect the freedom and the rights of the confederates and to promote their common prosperity

**3. Cantonal Sovereignty**

The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution and, as such, exercise all rights which are not entrusted to the Federal power

**4. Equality**

(1) All Swiss citizens are equal before the law. In Switzerland there shall be no subjects nor privileges of place, birth, person or family

(2) Men and women have equal rights. The law shall provide for their equal treatment, especially as regards family, education and work. Men and women are entitled to equal pay for equal work

**5. Guarantees**

The Confederation shall guarantee the Cantons their territory, their sovereignty within the limits set forth in Article 3, their constitutions, the freedom and the rights of the people, the constitutional rights of the citizens as well as the rights and prerogatives conferred upon the authorities by the people

**6. Cantonal Constitutions**

(1) The Cantons are bound to request the Confederation to guarantee their constitutions

(2) This guarantee shall be afforded provided—

a) these constitutions contain nothing inconsistent with the Federal Constitution,

b) they ensure the exercise of political rights according to republican (representative or democratic) forms

**7. Treaties between Cantons**

(1) All separate alliances and all treaties of a political nature between Cantons are prohibited

(2) The Cantons may, however, conclude agreements among themselves concerning matters of legislation, justice and administration, provided they bring such agreements to the notice of the Federal authority, which is entitled to prevent the execution of the agreements if they contain anything contrary to the Confederation or to the rights of other Cantons. If this is not the case the contracting Cantons may request the cooperation of the Federal authorities for the execution of such agreements

**8. War and Foreign Affairs**

The Confederation alone has the right to declare war and to make peace as well as to conclude alliances and treaties, especially customs and commercial treaties, with foreign States

**9. Cantonal Treaties**

Exceptionally, the Cantons retain the right to conclude treaties with foreign States concerning matters of public economy, neighborly relations and

police provided such treaties contain nothing contrary to the Confederation or to the rights of other Cantons

#### **10. Cantonal Foreign Affairs**

(1) All official intercourse between the Cantons and foreign Governments or their representatives shall take place through the agency of the Federal Council

(2) The Cantons may, however, correspond directly with subordinate authorities and officials of a foreign State with respect to the matters mentioned in Article 9

#### **11. Military Capitulations**

No military capitulations may be concluded

#### **12. Duties of State Officials**

(1) Members of the Federal authorities, Federal, civil and military officials and Federal representatives or Commissioners, as well as members of Cantonal Governments or Legislative Assemblies, may not accept pensions, allowances, titles, gifts or decorations from foreign Governments. Any infringement of this prohibition shall entail the loss of mandate or office

(2) Whoever is in possession of such a pension, title or decoration may not be elected or appointed member of a Federal authority, civil or military official of the Confederation, Federal representative or Commissioner or member of a Cantonal Government or Legislative Assembly unless before assuming the mandate or office he expressly renounces the benefit of the pension or title or has returned the decoration

(3) In the Swiss Army, no decorations may be worn and no titles conferred by foreign Governments may be assumed

(4) All officers, non-commissioned officers and soldiers are forbidden to accept such distinctions

#### **13. Standing Army**

(1) The Confederation may not maintain a standing army

(2) Without the consent of the Federal authorities, no Canton or Half-Canton may maintain a standing armed force of more than 300 men, not including Police forces

#### **14. Military Disputes between Cantons**

In the event of disputes arising among them, the Cantons are bound to refrain from taking any independent action and from arming. They shall submit to the settlement of such disputes as decided in accordance with Federal regulations

#### **15. Military Assistance between Cantons**

In the event of a Canton being suddenly threatened from without, its Government shall seek the assistance of other Cantons while simultaneously informing the Federal authority, this being done without prejudice as to the

measures that authority may decide. The Cantons called upon are bound to give their assistance. The Confederation shall bear the costs.

#### **16 Federal Military Intervention**

(1) In the case of internal troubles or when danger threatens from another Canton, the Government of the threatened Canton must immediately inform the Federal Council in order to enable it to take appropriate measures within the limits of its competence [Article 102 (3), (10) and (11)] or to summon the Federal Assembly. In urgent cases while immediately informing the Federal Council, the Government is entitled to seek help from other Cantons, which are bound to provide it.

(2) Whenever the Cantonal Government is unable to summon help, the competent Federal authority may intervene without being called upon, this authority is bound to do so whenever the security of Switzerland is at stake.

(3) In the event of a Federal intervention, the Federal authorities shall ensure that the provisions of Article 5 are observed.

(4) The costs shall be borne by the Canton requesting or giving cause for a Federal intervention, unless the Federal Assembly should decide otherwise in view of special circumstances.

#### **17. Military Passage**

In the cases mentioned in Articles 15 and 16, every Canton is bound to afford free passage to armed forces. These shall immediately be placed under Federal command.

#### **18 Military Service**

(1) Every Swiss is under the obligation to perform military service.

(2) Members of the armed forces who in the course of their Federal military service lose their life or suffer permanent injury to their health shall be entitled to relief from the Confederation for themselves or for their families, should they be in need.

(3) All members of the armed forces shall be given their first arms, equipment and clothing free of charge. The soldiers shall keep their personal arms under the conditions Federal legislation shall determine.

(4) The privilege tax on exemption from military service shall be levied by the Cantons for the account of the Confederation according to the provisions of Federal legislation.

#### **19 Federal Army**

(1) The Federal army consists of

a) the troops of the Cantons,

b) all Swiss who though not belonging to those troops are nevertheless subject to military service.

(2) The right to dispose of the army as well as of the war materials provided for it by law rests with the Confederation.

(3) In time of danger, the Confederation also has the right to dispose directly and exclusively of all men not incorporated into the Federal army as well as of all other military resources of the Cantons

## **20. Military Affairs**

(1) Legislation on military organization is a Federal concern. The execution of such legislation within the Cantons shall be ensured by the Cantonal authorities within the limits to be laid down by Federal legislation and under the supervision of the Confederation

(2) All military training is a Federal concern, the same applies to armament

(3) The supply and maintenance of clothing and equipment remains a Cantonal concern, however, the expenses resulting therefrom shall be reimbursed to the Cantons by the Confederation according to regulations to be laid down by Federal legislation

## **21. Composition of Military Units**

(1) Insofar as there are no objections to this for military reasons, the military units shall be made up of men coming from the same Canton

(2) The composition of such units, the responsibility for maintaining their effective strength and the appointment and promotion of their officers are Cantonal concerns subject to such general regulations as the Confederation shall lay down

## **22. Military Ground**

(1) The Confederation has the right to take over, against fair compensation, the use or the ownership of military training grounds and buildings destined to military purposes which already exist in the Cantons

(2) The regulations governing such compensation shall be laid down by Federal legislation

## **22bis. Civil Defence**

(1) Legislation on civil defence of persons and property against the consequences of acts of war is a Federal concern

(2) The Cantons shall be consulted during the drafting of executory legislation. They shall be entrusted with its execution under the high supervision of the Confederation

(3) The contributions of the Confederation towards the cost of civil defence shall be fixed by law

(4) The Confederation is entitled to institute compulsory civil defence service for men by means of a Federal law

(5) Women may engage in voluntary civil defence service, the details of such service shall be regulated by law

(6) Allowances, insurance and compensation for loss of earnings for persons performing civil defence service shall be regulated by law

(7) A law shall regulate the use of civil defence organizations in emergencies

**22ter. Property Rights**

(1) The right of ownership is guaranteed

(2) To the extent allowed by their constitutional powers the Confederation and the Cantons can, by legislation and for reasons of public interest, make provision for expropriation and restrictions on ownership

(3) In cases of expropriation and restriction of ownership equivalent to expropriation, fair compensation shall be paid

**22quater. Zoning Plans**

(1) The Confederation shall decree by legislation principles applicable to zoning plans to be drawn up by the Cantons for the purpose of ensuring the judicious use of ground and rational land occupation

(2) It shall encourage and coordinate the efforts of the Cantons, and collaborate with them

(3) In carrying out its functions, it shall take into account the needs of land zoning at national, regional, and local level

**23. Public Works**

(1) The Confederation is entitled in the interest of Switzerland, or of a considerable part of it, to order public works at its own expense or to encourage such works by granting subsidies

(2) For this purpose, the Confederation may, against full compensation, make use of the right of expropriation. Detailed provisions in this regard shall be laid down by Federal legislation

(3) The Federal Assembly may prohibit public works which would affect the military interests of the Confederation

**23bis Bread Grain**

(1) The Confederation shall maintain such stocks of bread grain as are necessary to ensure the country's food supply. It may compel millers to store bread grain and to purchase it from the Confederation's stocks in order to facilitate the latter's renewal

(2) The Confederation shall encourage the cultivation of bread grain within the country and promote the selection and acquisition of high-quality home-grown seeds. It shall buy home-grown quality bread grain suitable for milling at a price which makes its cultivation possible. Millers can be compelled to purchase such grain at not more than the Confederation's cost price

(3) The Confederation shall ensure the existence of a national milling industry while at the same time safeguarding the interests of consumers of flour and bread. It shall supervise within the limits of its powers the trade in bread grain, bread-flour and bread as well as the prices of these commodities. The Confederation shall take the necessary measures in order to regulate the import of bread flour. It may reserve to itself the exclusive right to import this commodity. If necessary, the Confederation shall grant facilities to millers in order to reduce their inland transport costs. It shall take measures in order to adjust the price of flour in mountain areas.

(4) The revenue from customs duty levied on bread grain shall serve to cover the Confederation's costs in supplying the country with bread grain

#### 24. Rivers and Forests

(1) The Confederation has the right of high supervision over the control of river embankments and forests

(2) It shall lend its support to works for the control and the embanking of mountain streams as well as the reforestation of their source areas. It shall lay down the regulations required to maintain such works and to preserve existing forests

#### 24bis. Water

(1) To ensure the economical use and the protection of water and the prevention of damage by water, the Confederation, having regard to the total water economy, shall by legislation establish principles in the general interest concerning

a) the conservation and exploitation of water, especially for the supply of drinking water and the enrichment of underground water,

b) the use of water for energy production and for cooling purposes,

c) the regulation of water levels and of the flow of surface and underground water, the diversion of water outside its natural course irrigation and drainage and other intervention in the water cycle

(2) For the same purpose the Confederation shall issue provisions on

a) the protection of surface and underground water against pollution and the maintenance of adequate water reserves,

b) the policing of hydraulic engineering installations, including the correction of rivers and the safety of dams,

c) intervention to influence precipitation,

d) obtaining and evaluation of hydrological data,

e) the Confederation's right to requisition water for its transport undertakings against payment of dues and adequate compensation for inconvenience

(3) Private rights reserved, the Cantons or those entitled under Cantonal legislation shall dispose of water and levy dues for its use. The Cantons shall fix the dues within the limits laid down by Federal legislation

(4) If the granting or exploitation of water rights affects international relations, the Confederation shall give a decision in consultation with the Cantons concerned. The same applies to interCantonal relations if the Cantons concerned cannot agree. In the case of international relations, the Confederation shall determine the dues after granting the Cantons concerned a hearing

(5) The execution of the Federal prescriptions shall be the responsibility of the Cantons unless this is reserved by law to the Confederation

(6) In the exercise of its competence the Confederation shall bear in mind the needs and safeguard the development possibilities of the water source areas and of the Cantons concerned

**24ter. Navigation**

Legislation on navigation is a Federal concern.

**24quater. Electrical Energy**

(1) The Confederation is empowered to issue legal provisions concerning the transmission and distribution of electrical energy

(2) Energy produced by hydraulic power may only be exported with the authorization of the Confederation

**24quinquies. Atomic Energy**

(1) Legislation on atomic energy is a Federal concern

(2) The Confederation shall enact regulations on protection against the danger resulting from ionizing rays

**24sexies. Protection of Nature**

(1) The protection of nature and landscapes is a Cantonal concern

(2) The Confederation shall, in carrying out its obligations, preserve the characteristic aspects of landscapes and localities, of historical sites as well as of natural and cultural monuments, and it shall leave them untouched whenever the general interest is predominant

(3) The Confederation may assist efforts to protect nature and landscapes by granting subsidies and it may acquire or conserve nature reserves, historical sites and monuments of national importance on a contractual basis or by means of expropriation

(4) The Confederation is entitled to legislate on the protection of animal and vegetable life

(5) Moors and marshlands of special beauty and national importance are protected objects. Installations must not be built on them and no alterations to the land of any kind may be carried out. Exceptions are installations which serve to maintain the purpose of protection and the existing agricultural use

Transitional provision. Installations, buildings and alterations to the land which conflict with the purpose of conservation areas and which are undertaken after 1st June, 1983, particularly in the Rothenthurm marshlands on the territory of Cantons Schwyz and Zug must be demolished and reversed at the builder's expense. The original State must be restored

**24septies. Environmental Protection**

(1) The Confederation shall legislate for the protection of man and his natural environment against harmful or annoying acts. In particular it shall counter air pollution and noise

(2) The carrying out of Federal provisions shall fall to the Cantons, insofar as the law does not limit this to the Confederation

**24octies. Energy Policy**

(1) The Confederation and the Cantons shall strive within the framework of their competence for a sufficient, varied and reliable, economical, and environment-compatible energy supply and for an economical and rational use of energy

- (2) The Confederation shall issue principles for
  - a) the use of domestic and renewable energies,
  - b) the economical and rational use of energy

(3) The Confederation

- a) shall issue regulations concerning the use of energy by installations, vehicles, and appliances,
- b) shall promote the development of energy techniques, particularly in the sphere of energy saving and renewable energies

(4) The Confederation shall have regard in its energy policy to the efforts of the Cantons and their communities and of the economic sector. Account is to be taken of the differing circumstances of the individual regions of the country and of economic acceptability. Measures concerning the use of energy buildings shall be taken by the Cantons.

## **25. Hunting and Fishing**

The Confederation is entitled to legislate on hunting and fishing, particularly in order to preserve alpine game and to protect birds which are useful for agriculture and forestry.

## **25bis. Animal Protection**

(1) The Confederation shall be empowered to legislate for the protection of animals.

(2) Federal legislation shall apply in particular to

- a) the keeping and care of animals,
- b) the use of and trade in animals,
- c) the transportation of animals,
- d) experiments involving live animals,
- e) slaughter at abattoirs and other methods of killing animals,
- f) the import of animals and products of animal origin.

(3) The carrying out of Federal regulations shall be incumbent upon the Cantons where the law does not reserve this for the Confederation.

## **26. Railways**

Legislation on the construction and operation of railways is a Federal concern.

## **26bis. Pipelines**

Legislation on pipelines for the transport of liquid or gaseous fuels is a Federal concern.

## **27. Educational System**

(1) The Confederation is entitled to set up, in addition to the existing polytechnic, a Federal university and other establishments for higher education or to subsidize such institutions.

(2) The Cantons shall provide for adequate primary education which shall be placed wholly under State control. Such education shall be compulsory and, in public schools, free of charge.

(3) It shall be possible for the adherents of all religious beliefs to attend public schools without being affected in any way in their freedom of belief or conscience

(3bis) For the period of compulsory schooling the school year shall begin between mid August and mid September

(4) The Confederation shall take appropriate measures against Cantons which fail to meet these requirements

#### 27bis {...}

#### 27ter. Cultural Activities

(1) The Confederation is entitled to legislate by means of laws or generally binding Federal decrees

a) in order to promote Swiss film production and cultural activities in the field of cinematography,

b) in order to regulate the import and distribution of films as well as the opening and transformation of establishments for the projection of films,

if necessary, the Confederation may in so doing depart from the freedom of trade and industry, should this be justified by general cultural or State interest

(2) The Cantons shall be consulted prior to the enactment of executory legislation. The same shall apply to interested cultural and economic associations

(3) Should the Federal legislation make the opening and transformation of establishments for the projection of films dependent on the granting of a license, the Cantons shall be competent for the granting of such licenses according to the procedure they shall determine

(4) In all other respects, legislation in the field of cinematography and its execution shall remain within the competence of the Cantons.

#### 27quater. Scholarships

(1) The Confederation may grant subsidies to the Cantons for their expenses relating to scholarships and other forms of financial aid for education

(2) The Confederation itself may, in order to complement Cantonal regulations, take steps or assist measures in order to further education by means of scholarships or other forms of financial help

(3) The autonomy of the Cantons in the field of education shall always be upheld

(4) Executory legislation shall take the form of Federal laws or generally binding Federal decrees. The Cantons shall be consulted beforehand

#### 27quinquies. Physical Education

(1) The Confederation shall have the right to issue directives relating to gymnastics and sporting activities for young people. It shall have the power to

compel by statute the teaching of gymnastics and sport in schools. It will be for the Cantons to apply Federal directives in schools.

(2) The Confederation shall encourage gymnastics and sporting activities for adults.

(3) The Confederation shall undertake the provision of a school of gymnastics and sport.

(4) The Cantons and interested organizations shall be consulted when implementing legislation is drafted.

## **27sexies. Scientific Research**

(1) The Confederation shall encourage scientific research. Its provision of finance may be conditional on coordination being guaranteed.

(2) It can create research establishments or take over existing establishments either entirely or in part.

## **28. Customs**

All matters relating to customs are a Federal concern. The Confederation has the right to levy import and export duties.

## **29. Customs Principles**

(1) The following principles shall govern the levying of customs duties.

1) Import duties

a) the materials required for domestic industry and agriculture shall be subject to the lowest possible duties,

b) the same shall apply to the necessities of life,

c) luxuries shall be subject to the highest duties. Unless there are compelling reasons to the contrary, these principles shall also be applied when concluding commercial treaties with foreign States,

2) Export duty rates shall be as moderate as possible,

3) The customs legislation shall contain suitable provisions to facilitate frontier and market trade.

(2) Notwithstanding the foregoing provisions, the Confederation may, in extraordinary circumstances, resort temporarily to exceptional measures.

## **30. Customs Receipts**

(1) The receipts from the customs duties shall accrue to the Federal treasury.

(2) { }

(3) { }

## **31. Freedom of Trade and Industry**

(1) Freedom of trade and industry is guaranteed throughout the territory of the Confederation, subject to such limitations as are contained in the Federal Constitution and the legislation enacted under its authority.

(2) Cantonal regulations concerning the exercise of trade and industry and the taxes on such activities remain unaffected. However, such regulations

shall not depart from the principle of freedom of trade and industry except where the Federal Constitution provides otherwise. Cantonal monopolies are likewise excepted.

### 31bis General Welfare, Economic Security

(1) Within the limits of its constitutional powers, the Confederation shall take measures to promote the general welfare and the economic security of its citizens.

(2) While promoting the general interest of the Swiss economy, the Confederation may enact regulations on the exercise of trade and industry and take measures in favour of specific economic sectors or professions. In so doing, it must respect the principle of freedom of trade and industry, subject to the provisions of paragraph (3).

(3) Where this is justified by general interest, the Confederation is entitled to enact regulations departing, if necessary, from the principle of freedom of trade and industry in order to

a) preserve important economic sectors or professions whose existence is threatened and to improve the skills of persons exercising an independent activity in those sectors or professions,

b) maintain a sound peasant population, ensure agricultural productivity and consolidate rural landownership,

c) protect regions whose economy is threatened,

d) prevent economically or socially harmful effects of cartels and similar groupings,

e) take precautionary measures for the economic protection of the country and also measures to ensure that the country is supplied with vital goods and services in the event of severe shortages which the economy itself cannot remedy.

(4) Regulations under headings a) and b) shall be enacted only if the economic sectors or professions to be protected have taken such measures to help themselves as can reasonably be expected of them.

(5) Federal legislation enacted under paragraph (3)(a) and (b), shall promote the development of organizations based on mutual assistance.

### 31ter. Restaurants

(1) The Cantons may legislate to make the running of establishments serving food or drink depend on professional and personal qualifications and also to subordinate the number of establishments to the existence of a need whenever the very existence of this trade is threatened by excessive competition. In so doing, due account shall be taken of the importance of the various types of establishments for the public welfare.

(2) Furthermore, the Confederation may, within the limits of its own legislative powers, authorize the Cantons to enact regulations on matters which do not call for Federal legislation and concerning which the Cantons themselves have no legislative powers.

**31quater. Banking**

- (1) The Confederation is entitled to legislate on banking
- (2) Such legislation shall take into consideration the specific task and position of the Cantonal banks

**31quinquies. Economic Policy**

(1) The Confederation shall take measures to ensure balanced economic development and, in particular, to prevent and combat unemployment and price inflation. It shall collaborate with the Cantons and private enterprise

(2) In the case of measures in the monetary and banking spheres, public finances and foreign trade, the Confederation can, if necessary, depart from the principle of freedom of trade and industry. It can oblige firms to form tax-privileged employment creation reserves. After their release the firms shall freely decide how to use them within the purpose laid down by law.

(3) When drawing up their estimates the Confederation, the Cantons and the Communes shall take into consideration the requirements of the economic situation. The Confederation can temporarily levy surcharges or grant rebates on Federal taxes to stabilize the economy. The money withdrawn from circulation is to be frozen for as long as the economic situation requires. Direct taxes shall then be refunded individually, indirect ones shall be used for the granting of rebates or for work creation.

(4) The Confederation shall take into consideration the varying economic development of the individual regions of the country.

(5) The Confederation shall conduct the necessary economic policy surveys.

**31sexies. Consumer Protection**

(1) The Confederation, while safeguarding the general interests of the Swiss economy as a whole and freedom of trade and industry, shall take measures to protect the consumer.

(2) In the area of Federal legislation on unfair competition consumer organizations have the same rights as professional and industrial associations.

(3) For disputes arising from contracts between end users and suppliers the Cantons shall, in cases up to a value prescribed by the Federal Council, provide for an arbitration procedure or a simple and quick litigation procedure.

(4) To prevent abuses in price fixing the Confederation shall issue regulations for monitoring the prices and price recommendations for goods and services of enterprises and organizations governed by public and private law, especially of cartels and cartel-like bodies, with a dominant position in the market. Insofar as the purpose requires it, such prices can be reduced.

**32. Procedures for Economic Regulations**

(1) Provisions mentioned in Articles 31bis, 31ter (2), 31quater, and 31quinquies may only be enacted through Federal laws or Federal decrees on which a popular vote can be requested. In the case of emergencies occurring

during periods of economic disturbances, Article 89bis shall remain applicable

(2) The Cantons shall be consulted prior to the enactment of executory legislation. As a rule, the execution of the Federal regulations shall be entrusted to them.

(3) Interested economic organizations shall be consulted prior to the enactment of executory legislation and may be called upon to cooperate in the application of executory regulations.

### 32bis. Alcohol

(1) The Confederation is entitled to legislate on the manufacture, import, refining, sale and taxation of distilled spirits.

(2) This legislation shall aim at reducing the consumption and consequently the import and manufacture of spirits. It shall encourage the growing of table-fruit and the use of indigenous raw materials suitable for distillation as food or fodder. The Confederation shall reduce the number of stills by way of agreed purchases.

(3) Concessions for industrial manufacture of distilled spirits shall be granted to cooperative and other private enterprises. The concessions thus granted shall facilitate the use of waste products from the cultivation of fruit-trees, grapes and sugarbeets and of the surplus production of fruits and potatoes to the extent that such raw materials cannot be suitably employed otherwise.

(4) Non-commercial manufacture of distilled spirits from fruit, fruit-waste, cider, wine, grape-skins, lees of wine, gentian roots, and similar materials shall remain authorized in existing domestic or circulating stills provided those materials are exclusively indigenous and either the product of the distiller's own harvest or grown wild. Such spirits shall be tax-free to the extent that they are necessary for the manufacturer's household or agricultural activities. Domestic stills continuing to operate after a period of 15 years as from the adoption of this article shall, in order to be able to continue their production, have to apply for a license which shall be granted to them free of charge, subject to the conditions to be specified by law.

(5) Specialties produced from distilled stone-fruit, wine, grape-skins, lees of wine, gentian roots and similar products shall be subject to taxation. The producer shall, however, be enabled to obtain a fair remuneration for the indigenous raw materials he uses.

(6) With the exception of tax-free quantities for home consumption and specialties, the distilled spirits produced in the country are to be delivered to the Confederation, which shall take them over against a fair price.

(7) No taxes shall be levied on products which are exported, in transit or denatured.

(8) The yield of taxes on sales in public establishments and on retail trade within the limits of their territory shall remain the due of the Cantons. Licenses for inter-Cantonal and international retail trade shall be granted by

the Confederation; the corresponding revenue shall be distributed amongst the Cantons in proportion to their normal resident population

(9) The Cantons shall receive 10 per cent of the Confederation's net revenue from taxes on spirits, which they must spend on combating the causes and effects of alcoholism and the abuse of addictive and narcotic drugs and of medicaments. The funds shall be distributed among the Cantons in proportion to their resident populations. The Confederation must spend its share on old age, survivors' and disability insurance.

### **32ter. Absinthe Prohibition**

(1) The manufacture, import, transport, sale and holding for sale of the liquor called absinthe are prohibited throughout the Confederation. This prohibition extends to all spirits which, whatever their designation, are an imitation of absinthe. It does not apply to transit of absinthe nor to its use for pharmaceutical purposes.

(2) The prohibition shall enter into force two years after its adoption. Federal legislation shall lay down the provisions rendered necessary by the prohibition.

(3) The Confederation is entitled to decree the same prohibition, by means of legislation, with respect to all other beverages containing absinthe which might constitute a public danger.

### **32quater. Innkeeping**

(1) The Cantons are entitled to enact legislation in order to subject the practice of the innkeeping profession and the retail trade in spirits to the restrictions required by public welfare. Trade in quantities less than two liters is deemed to be retail trade in the case of non-distilled spirits.

(2) The Cantons may, within the limits of Article 31 (2), and by appropriate legislation, subject the trade in non-distilled spirits in quantities ranging from 2 to 10 liters to the granting of a license and the payment of a modest fee as well as to supervision by the authorities.

(3) The sale of non-distilled spirits may not be subjected by the Cantons to the payment of special taxes apart from licensing fees.

(4) Corporate persons may not be treated less favourably by Cantons than individuals. Producers of wine and cider may sell their own production in quantities of two liters and more, without authorization and without paying any fee.

(5) The Confederation is entitled to legislate on the trade in non-distilled spirits in quantities of two liters and more. Such provisions may not infringe the principle of freedom of trade and industry.

(6) Hawking and other forms of itinerant sale of spirits are prohibited.

### **33. Liberal Professions**

(1) The Cantons may require proofs of capacity from persons who intend to exercise a liberal profession.

(2) Federal legislation shall provide the possibility for such persons to obtain certificates of capacity valid throughout the Confederation.

**34. Child Labor, Worker Protection, Insurance Firms**

(1) The Confederation is entitled to enact uniform regulations on the employment of children in factories and on the working hours of adult persons. It is likewise entitled to enact regulations in order to protect the worker against the operation of unhealthy and dangerous industries.

(2) The business operations of emigration agencies and of private insurance firms are subject to the supervision and legislation of the Confederation.

**34bis. Health and Accident Insurance**

(1) The Confederation shall institute, by means of legislation, an insurance against illness and accidents, taking due account of existing insurance funds.

(2) It may make adherence thereto compulsory for all or for specific categories of citizens.

**34ter. Employee Protection**

(1) The Confederation is entitled to legislate on

a) the protection of employees,

b) the relations between employers and employees, particularly as regards mutually agreed regulations concerning industrial and professional matters,

d) adequate compensation for loss of wages and earnings due to military service,

e) employment agencies,

f) { }

g) vocational training in the fields of industry, crafts, commerce, agriculture, and domestic service.

(2) The generally binding effect under heading c) may only be decreed in the field of labour relations and provided such regulations take due account of legitimate minority interests and regional diversities and do not affect equality before the law and freedom of association.

(4) The provisions of Article 32 shall be applicable by analogy.

**34quater. Retirement and Disability Insurance**

(1) The Confederation shall adopt the measures necessary to promote an adequate old age, survivors', and disability insurance scheme. This scheme shall be provided for by a Federal insurance, professional insurance and insurance undertaken by the individual.

(2) The Confederation shall institute, by means of legislation, compulsory insurance for old age, survivors' and the disabled covering the entire population. This insurance shall provide for benefits in cash and in kind. Payments shall take appropriate account of basic needs. Maximum payments shall not exceed double the minimum payments. Payments shall be adjusted at least to the cost of living.

The insurance schemes shall be implemented with the co-operation of the Cantons; professional associations and other private or public organizations may be called upon to cooperate. The insurance shall be financed

a) by contributions by those insured, in the case of wage or salary-earners, half the contributions shall be the responsibility of the employer,

b) by a contribution from the Confederation, which shall not exceed one half of the cost, and which shall be covered in the first instance by the net revenue from the tax and customs duty on tobacco, as well as by tax on spirits under the provisions of Article 32bis (9),

c) if provided for in the implementing regulations, by a contribution from the Cantons, which shall reduce accordingly the share provided by the Confederation.

(3) In order to allow elderly people, survivors, and disabled persons to maintain their previous standard of living in an appropriate manner, the Confederation shall — taking into account the provisions of the Federal insurance scheme — institute the following measures with regard to professional insurance by means of legislation

a) it shall oblige employers to insure their personnel with an insurance institution for business enterprises, administrations, or associations, or with some similar institution and to assume responsibility for at least half of the contributions,

b) it shall fix the minimum requirements which these insurance institutions must satisfy, it shall be entitled, in order to resolve certain special problems, to make provisions for measures applying to the whole country,

c) it shall take steps to ensure that every employer is able to insure personnel with an insurance institution, it shall have power to set up a Federal fund,

d) it shall take steps to ensure that all self-employed persons have the option of insuring themselves with an institution undertaking professional insurance under conditions equivalent to those offered to salary or wage-earners. Insurance can be made obligatory for certain categories of self-employed persons generally or for covering specific risks

(4) The Confederation shall take steps to ensure that the professional insurance as well as the Federal insurance schemes are able, in the long term, to develop in accordance with their aims

(5) The Cantons can be obliged to grant tax exemptions to institutions engaged in Federal insurance or professional insurance, as well as tax relief to those insured, and to their employers with regard to contributions and rights to benefits

(6) The Confederation, in collaboration with the Cantons, shall encourage individuals to provide for their future, notably through fiscal measures and policies which establish rights of ownership

(7) The Confederation shall encourage the rehabilitation of disabled persons and support efforts made to assist elderly persons survivors and the disabled It shall be entitled to use the financial resources of the Federal insurance scheme for this purpose

### 34quinquies. Family Protection

(1) The Confederation shall, in the exercise of the power conferred upon it and within the limits set by the Constitution have due regard for the needs of the family.

(2) The Confederation is entitled to legislate in the field of family compensation funds It may declare adherence thereto compulsory for all or for specific categories of citizens It shall take account of the existing funds, assist the efforts of the Cantons and professional associations to set up new funds and it is entitled to establish a central compensation fund It may make its financial contributions dependent on adequate participation of the Cantons

### (3) { }

(4) The Confederation shall institute maternity insurance by means of legislation It may declare adhesion thereto compulsory for all or for specific categories of citizens and it may require persons to contribute financially who are not eligible for insurance benefits It may make its financial contribution dependent on an adequate participation of the Cantons

(5) The laws enacted pursuant to this Article shall be implemented with the cooperation of the Cantons, private and public associations may be called upon to cooperate

### 34sexies Housing Development

(1) The Confederation shall take measures aimed at encouraging the construction of housing, especially through a lowering of costs, and providing the opportunity for owning a dwelling or house Federal legislation shall determine the conditions for giving assistance grants

(2) The Confederation shall have the following particular powers

a) to facilitate the obtaining and development of sites for housing construction,

b) to support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled, and persons in care

c) to research into the housing market and into building methods and to encourage rationalization in building,

d) to ensure that capital is obtained for housing construction

(3) The Confederation is authorized to decree the necessary legal provisions for the development of sites intended for housing construction as well as for rationalization in building

(4) Insofar as the nature of these measures exceeds the powers of the Confederation alone, the Cantons shall be called on to help carry them out

(5) The Cantons and other interested groups shall be consulted during the drafting of implementing legislation

### **34septies. Tenant Protection**

(1) The Confederation shall be empowered to issue regulations against abuses in the renting area. It shall regulate the protection of tenants from excessive rents and other improper demands by landlords, the voidability of improper notice and the extension for a limited time of tenancies

(2) In order to encourage the conclusion of common agreements and to prevent abuses in the field of rents and housing, the Confederation shall be empowered to decree provisions having generally binding effect with regard to certain obligations in basic contracts and other measures commonly agreed between lessors and lessees, or organizations representing similar interests. Article 34ter (2) of the Constitution is applicable by analogy

### **34octies {...}**

### **34novies. Unemployment Insurance**

(1) The Confederation shall regulate unemployment insurance by means of legislation. It is entitled to make regulations about unemployment benefit

(2) Unemployment insurance shall be obligatory for employees. The law shall lay down the exceptions. The Confederation shall ensure that self-employed persons can, on certain conditions, insure themselves

(3) Unemployment insurance shall guarantee adequate compensation for loss of earnings and shall support, by means of financial contributions, measures to prevent and combat unemployment

(4) Unemployment insurance shall be financed by the insured persons' contributions, if the insured persons are employees their employers shall bear half the cost of the contributions. The law shall limit the amount of earned income subject to contributions and the contribution rate. The Confederation and the Cantons shall make financial contributions in exceptional circumstances

(5) The Cantons and economic groupings (unions, employers' organizations, and professional organizations etc.) shall cooperate in the making and implementation of the regulations

### **35. Gambling**

(1) The opening and the running of gambling houses are prohibited

(2) Cantonal Governments may, subject to the restrictions required by the public welfare, permit recreational games to the extent customary in the kursoraals up to the spring of 1925, provided that, in the opinion of the licensing authority, such games appear necessary in order to maintain or to further the tourist trade and that they are organized by enterprises running kursoraals for that purpose. The Cantons may also prohibit such games

(3) An order of the Federal Council shall determine the restrictions required by the public welfare. The stake may not exceed five francs.

(4) All licenses granted by the Cantons are subject to approval by the Federal Council.

(5) One quarter of the gross receipts from the games shall be paid to the Confederation, which shall contribute these sums to relief for victims of natural disasters and to public utility works, without taking account of its own contributions.

(6) The Confederation may also take appropriate measures concerning lotteries.

### 36. Post and Telegraphs, Secrecy

(1) Throughout Switzerland, post and telegraphs are a Federal concern.

(2) Revenue from posts and telegraphs shall accrue to the Federal treasury.

(3) In all parts of Switzerland, rates shall be fixed according to the same principles and as fairly as possible.

(4) The inviolability of the secrecy of letters and telegrams is guaranteed.

### 36bis. National Highways

(1) The Confederation shall ensure the setting up and utilization of a network of national highways by means of legislation. The main communication routes which present an interest for the whole of Switzerland may be declared national highways.

(2) The Cantons shall build and maintain the national highways according to the regulations laid down by the Confederation and under its high supervision. The Confederation may take over the task incumbent upon a Canton on request by the latter or if the interest of the work so requires.

(3) Land suitable for agricultural production shall be spared whenever possible. Disadvantages as regards the utilization and cultivation of land which result from the building of national highways shall be compensated by appropriate measures at the expense of the road-building funds.

(4) The cost of building, running and maintaining national highways shall be shared between the Confederation and the Cantons, due account being taken of the burdens falling on the individual Cantons as a result of the national highways as well as of their interests and financial resources.

(5) { }

(6) Subject to the powers of the Confederation, the national highways remain under the sovereignty of the Cantons.

### 36ter. National Highways Finances

(1) The Confederation shall allocate half the net revenue from the import duty on motor fuels and all the revenue from any supplementary tax to the following ends connected with road traffic:

a) its share in the cost of the national highways,

b) contributions to the cost of building main highways belonging to the network to be determined by the Federal Council in collaboration with the Cantons and conforming to specific technical standards,

c) contributions to the cost of removing level crossings or of making them safe, to the promotion of combined traffic, of the transport of accompanied motor vehicles, and of the building of station facilities as well as other measures aimed at separating traffic,

d) contributions to measures for the protection of the environment and the landscape made necessary by motorized road traffic and structures for protection against the forces of nature along roads open to motorized traffic;

e) general contributions to the cost of roads open to motor vehicles and to financial equalization in highway matters,

f) contributions to Cantons with Alpine roads serving international traffic and to Cantons without national highways

(2) To the extent that the revenue from the basic tax earmarked for this purpose is not sufficient to cover the tasks listed in paragraph (1), the Confederation shall levy a supplementary tax

### **37. Roads and Bridges**

(1) The Confederation shall exercise high supervision over roads and bridges in the upkeep of which it is interested

(2) No duties may be collected for the use of roads the purpose of which is to be open to the public. The Federal Assembly may authorize exceptions in special cases

### **37bis. Vehicle Regulations**

(1) The Confederation is entitled to enact regulations concerning automobiles and bicycles

(2) The Cantons retain the right to limit or prohibit the circulation of automobiles or bicycles. The Confederation may, however, declare certain roads which are necessary for general transit traffic totally or partially open. The use of the roads for the service of the Confederation remains reserved

### **37ter. Aerial Regulations**

Legislation on aerial navigation is a Federal concern

### **37quater. Footpath Networks**

(1) The Confederation shall lay down principles governing footpath networks

(2) The construction and maintenance of footpath networks shall be a Cantonal matter. The Confederation can support and co-ordinate these activities

(3) In the performance of its tasks the Confederation shall have regard to footpath networks and replace paths which it has to destroy

(4) The Confederation and the Cantons shall collaborate with private organizations

**38 Coinage, Monetary System**

(1) The Confederation is entitled to exercise all rights pertaining to the State monopoly of coinage

(2) It alone has the right to coin money

(3) It shall determine the monetary system and, if necessary, shall enact regulations on the rate of exchange

**39. Banknotes, Central Bank**

(1) The right to issue banknotes and other types of paper money rests exclusively with the Confederation

(2) The Confederation may exercise its monopoly of issuing banknotes by means of a State bank placed under a separate management or concede its right, subject to a right of repurchase, to a joint stock central bank managed with the collaboration and under the supervision of the Confederation

(3) The main function of the bank enjoying the monopoly of issuing banknotes shall be to regulate the circulation of money in the country, to facilitate payment operations and to conduct within the scope of Federal legislation a credit and monetary policy beneficial to the general interest of Switzerland

(4) At least two-thirds of the net profits of the bank after deduction of a reasonable interest or of reasonable dividends on the initial capital or the shares and of statutory payments to the reserve fund shall accrue to the Cantons

(5) The bank and its branches shall be exempt from any taxation the Cantons

(6) The Confederation may not suspend its obligation to reimburse banknotes and other paper money nor decree the compulsory acceptance thereof except in time of war or disturbed monetary relations

(7) Banknotes issued must be covered by gold and short-term securities

(8) Regulations on the implementation of this Article shall be laid down by Federal legislation

**40 Weights and Measures**

(1) The determination of weights and measures is a Federal concern

(2) The Cantons shall implement the legislation concerning this subject under the supervision of the Confederation

**41. Arms**

(1) Manufacture and sale of gunpowder are the exclusive concern of the Confederation

(2) Manufacture, purchase and distribution of arms, ammunition, explosives and other kinds of war materials and components thereof are subject to an authorization to be granted by the Confederation. Such authorizations shall only be granted to persons who and enterprises which prevent the necessary guarantees in the light of the national interest. The rights of state-owned enterprises of the Confederation remain reserved

(3) The import and export of arms, ammunition, and war materials as understood in the present provisions may take place only with the authorization of the Confederation. The Confederation is also entitled to make transit dependent on its authorization.

(4) Subject to Federal legislation, the Federal Council shall enact the necessary regulations for the implementation of paragraphs (2) and (3) by means of an Ordinance. In particular, it shall lay down detailed regulations concerning the granting, duration and recalling of concessions. Furthermore, it shall specify the arms, ammunition, explosives, other materials and components thereof to which the present provision shall apply.

#### **41bis. Taxes**

(1) The Confederation is entitled to levy the following taxes:

a) stamp duties on securities, including coupons, bills of exchange and similar documents, on insurance premium receipts and other documents relating to trading operations, this right to levy taxes does not extend to documents concerning transactions in the field of real estate and mortgages,

b) an anticipatory tax on income from movable capital, on lottery prizes, and insurance payments;

c) taxes on raw tobacco and manufactured tobacco, and on other materials and on products manufactured from these other materials which are used in the same way as raw tobacco and manufactured tobacco,

d) special taxes affecting persons resident abroad to counteract fiscal measures by foreign States.

(2) Any object which according to legislation is subject to a Federal tax under paragraph (1)(a), (b) and (c), or exempt from such taxes shall remain free from any taxation on similar grounds by the Cantons or Communes.

(3) Federal legislation shall provide for the implementation of this Article.

#### **41ter. Additional Taxes**

(1) In addition to the taxes it is entitled to levy under Article 41bis, the Confederation can levy:

a) a turnover tax,

b) special consumer taxes on the turnover and importation of goods of the type designated in paragraph (4),

c) a direct Federal tax.

The power to levy the taxes mentioned under a) and c) shall expire at the end of 1994.

(2) Turnover on which the Confederation levies taxes or which it declares exempt from taxation according to paragraph (1)(a) and (b) shall not be subject to the same kind of taxation by the Cantons and Communes.

(3) The turnover tax referred to in paragraph (1)(a) can apply to transactions in goods, to the import of goods, and to professional work on movable property, buildings, and land with the exception of cultivation of the soil for agricultural purposes. The law shall stipulate which goods are exempt or are to be taxed at a lower rate. The tax shall not exceed 6.2 per cent of the value of retail goods and 9.3 per cent of the value of wholesale goods.

(4) The special consumer taxes according to paragraph (1)(b) shall apply to

a) petroleum and natural gas, and products refined from them, as well as motor fuel derived from other materials. Article 6ter similarly applies to proceeds from taxes on motor fuel;

b) beer. The total tax rate to which beer is subject, consisting of the beer tax, supplementary customs duty on raw materials for brewing and on beer, and turnover tax, shall remain, in proportion to the price of beer, at the level of 31st December 1970.

(5) The direct Federal tax, according to paragraph (1)(c), shall be established according to the following rules:

a) the tax is applicable to both the incomes of individuals and the net profits, capital, and reserves of corporate bodies. Corporate bodies, whatever their legal form, shall be rated, according to their economic capacity, in as equitable a way as possible;

b) the tax is levied by the Cantons on behalf of the Confederation. Three tenths of the gross tax yield shall be assigned to the Cantons, at least one sixth of the total apportioned to the Cantons must be used for financial equalization among Cantons;

c) in fixing tariffs, due account shall be taken of the burden imposed by direct, Cantonal, and communal taxes. The tax shall not exceed

— 9.5 per cent of the income of individuals: liability shall begin at the earliest when net income reaches 9,000 francs or, in the case of married persons, 11,000 francs;

— 9.8 per cent of net profits of corporate bodies;

— 0.825 per cent of the capital and reserves of corporate bodies.

The effect of fiscal drag on the tax on individuals' income shall be adjusted periodically.

(6) Federal legislation shall govern the implementation of this Article.

## 12. Federal Resources

In order to cover its expenses, the Confederation shall have the following resources:

a) the income from Federal property;

b) the net revenue from posts and from the monopoly of gunpowder (Article 11);

c) the net receipts from the provision tax on exemption from military service (Article 16 (3)).

- d) the receipts from customs duties (Article 30),
- e) the Confederation's share of the net receipts from taxes on distilled spirits [Article 32bis and 34quater (7)] as well as of the gross receipt from gambling [Article 35 (5)],
- f) the Confederation's share of the net profits of the bank entrusted with the monopoly of issuing bank-notes [Article 39 (4)],
- g) the receipts from Federal taxes (Article 41bis and following),
- h) the receipts from fees and other revenues provided by law

#### **42bis. Debt**

The Confederation shall reduce the Federal debt. In so doing it shall have due regard to the economic situation.

#### **42ter. Cantonal Equalization**

The Confederation shall encourage financial equalization among the Cantons. In particular, appropriate consideration shall be given to the financial resources of the Cantons and to the situation of mountainous regions whenever Federal subsidies are granted.

#### **42quater. Tax Advantage Regulation**

The Confederation is entitled to enact regulations, by means of legislation, against arrangements with tax-payers granting unjustified tax advantages.

#### **42quinquies. Tax Administration**

(1) The Confederation, in cooperation with the Cantons, shall ensure the harmonization of direct taxes levied by the Confederation, the Cantons and the Communes.

(2) To this end it shall promulgate, by means of Federal legislation, principles for Cantonal and Communal legislation on tax liability, on objects liable to tax, on taxation periods, and on procedural and penal law governing taxation matters and shall supervise compliance. The Cantons shall remain responsible, in particular, for fixing tax scales, tax rates and tax-free amounts.

(3) In legislating on the principles for direct Cantonal and communal taxes and in legislating for direct Federal taxes, the Confederation shall take account of the efforts of the Cantons to achieve fiscal harmonization. The Cantons shall be granted an adequate period to adjust their fiscal legislation.

(4) The Cantons shall cooperate in the drafting of the Federal legislation.

#### **43. Citizenship, Right to Vote**

(1) Every citizen of a Canton is a Swiss citizen.

(2) In this capacity, he may take part in all Federal elections and votes at his domicile after having duly proved his right to vote.

(3) No one may exercise political rights in more than one Canton.

(4) The established Swiss citizen shall enjoy at his domicile all the rights of the citizens of that Canton and, with these, all the rights of the citizens of

that Commune. However, sharing in property belonging in common to local citizens or to corporations and the right to vote in matters exclusively regarding local citizens are excepted unless Cantonal legislation should provide otherwise.

#### 44. Acquisition of Citizenship

(1) The Confederation shall regulate the acquisition and loss of citizenship through descent, marriage and adoption and the loss of Swiss nationality and its restoration.

(2) Swiss nationality can also be acquired through naturalization in a Canton and a Commune. Naturalization is carried out by the Cantons after the Confederation has granted permission for naturalization. The Confederation shall issue minimal regulations.

(3) Anyone who is naturalized shall have the rights and duties a citizen of a Canton and a Commune. Insofar as the Cantonal law provides for this he shall share in the property belonging in common to local citizens and corporations.

#### 45. Settlement, Extradition

Every Swiss citizen can settle in any place in the country. A Swiss may not be expelled from Switzerland.

#### 45bis. Swiss Living Abroad

(1) The Confederation is entitled to further the relations of Swiss living abroad among themselves and with the fatherland and to assist institutions set up to that effect.

(2) It may, taking account of the special situation of the Swiss living abroad, enact regulations determining their rights and duties in particular with respect to the exercise of political rights, the carrying out of military obligations and to assistance. The Cantons shall be consulted beforehand.

#### 46. Subjection to Jurisdiction

(1) In matters of civil law, established persons shall, as a rule, be subject to the jurisdiction and legislation of their domicile.

(2) Federal legislation shall enact the provisions required to implement this principle and to prevent double taxation.

#### 47. Resident Swiss Citizens

A Federal law shall specify the difference between establishment and residence and at the same time lay down provisions regulating the political and civil rights of resident Swiss citizens.

#### 48. Assistance for Needy Persons

(1) Needy persons shall be assisted by the Canton in which they are living. The cost of this assistance shall be borne by their Canton of domicile.

(2) The Confederation can order that recourse be had to a previous Canton of domicile or the Canton of origin.

**49. Freedom of Religion and Belief**

(1) Freedom of creed and conscience is inviolable

(2) No one may be forced to participate in a religious association, to attend religious teaching or to perform a religious act, nor be subjected to penalties of any sort because of his religious beliefs

(3) The holder of the paternal or tutelary authority shall determine the religious education of children in conformity with the foregoing principles until they have completed their 16th year

(4) The exercise of civil or political rights may not be restricted by any prescription or condition of an ecclesiastical or religious nature

(5) Religious beliefs do not exempt anyone from carrying out civic duties

(6) No one shall be bound to pay taxes the proceeds of which are specifically appropriated to cover the cost of worship within a religious community to which he does not belong. The detailed implementation of this principle shall be a matter for Federal legislation

**50. Right to Worship**

(1) The free exercise of acts of worship is guaranteed within the limits set by public order and morality

(2) The Cantons and the Confederation may take appropriate measures for the preservation of public order and of peace among the members of the different religious communities, as well as against encroachment by religious authorities on the rights of citizens and the State

(3) Disputes of public or private law which may arise out of the creation of new religious communities or out of the splitting up of existing communities may be brought before the competent Federal authorities by lodging a complaint

(4) The establishment of bishoprics on Swiss territory is subject to the authorization of the Confederation

51. {...}

52. {...}

**53. Registration, Burial**

(1) The determination and registration of civil status rests with the civil authorities. Federal legislation shall lay down further provisions on this subject

(2) The disposal of burial grounds is a concern of the civil authorities. They shall make sure that every deceased person can have a decent burial

**54. Right to Marry**

(1) The right to marry is placed under the protection of the Confederation

(2) This right may not be limited for religious or economic reasons nor on account of previous conduct or of other police considerations

(3) A marriage which has been celebrated in a Canton or abroad according to the local legislation shall be recognized as valid within the whole territory of the Confederation

(5) Children born before marriage shall be legitimized by the subsequent marriage of their parents

(6) No bride-admission fee or any other similar tax may be levied

#### 55. Freedom of the Press

(1) The freedom of the press is guaranteed

(2) { }

(3) { }

#### 55bis. Radio and Television

(1) Legislation concerning radio and television and other forms of public diffusion of features and information by telecommunication techniques is a matter for the Confederation

(2) Radio and television shall contribute to the cultural development and entertainment of the listeners and viewers and to the free formation of opinion. They shall take into account the peculiarities of the country and the needs of the Cantons. They shall present events factually and give impartial expression to multiplicity of views

(3) The independence of radio and television and autonomy in the creation of programs are guaranteed within the limits laid down in paragraph (2)

(4) Account is to be taken of the position and functions of other communications media, especially the press

(5) The Confederation shall create an independent authority to examine complaints

#### 56. Freedom of Association

(1) Citizens have the right to form associations provided that neither the purpose of such associations nor the means used to carry it out are illegal or dangerous to the State. Cantonal laws shall lay down the measures required to repress the misuse of this right

(2) { }

(3) { }

#### 57. Right of Petition

The right of petition is guaranteed

#### 58. Constitutional Judge, Ecclesiastical Jurisdiction

(1) No one may be deprived of his constitutional judge; therefore no extraordinary courts of law may be set up

(2) Ecclesiastical jurisdiction is abolished

**59. Personal Jurisdiction**

(1) The solvent debtor having a domicile in Switzerland must be sued, for personal debts, before the Judge of his domicile, therefore, his property may not be seized or attached for personal claims outside the Canton in which he has his domicile

(2) In the case of aliens, the pertinent provisions of international treaties remain reserved.

(3) Imprisonment for debts is abolished

**60. InterCantonal Equality**

All Cantons are bound to afford all Swiss citizens the same treatment as their own citizens in the fields of legislation and of judicial proceedings

**61. InterCantonal Enforceability of Judgments**

Final judgments rendered in civil law cases in all Cantons shall be enforceable in the whole of Switzerland

**62. Transfer Taxes, Cantonal Preemption Rights**

All transfer taxes on the moving of property inside Switzerland and all preemption rights of citizens of one Canton against citizens of other Cantons are abolished

**63. Free Transfer of Property**

With respect to foreign States, free transfer of personal belongings shall be granted, provided reciprocity exists

**64. Federal Civil Legislation—**

(1) The Confederation is entitled to legislate

— on civil capacity,

— on all legal matters relating to commerce and movable property transactions (law of contracts and tort including commercial law and law of bills of exchange),

— on copyrights in literature and arts,

— on protection of inventions suitable for industrial use, including designs and models,

— on suits for debts and bankruptcy

(2) The Confederation is also entitled to legislate in the other fields of civil law

(3) The organization of the courts, procedure, and jurisdiction shall remain a matter for the Cantons as before

**64bis Federal Criminal Legislation**

(1) The Confederation is entitled to legislate in the field of criminal law

(2) The organization of the courts, procedure, and jurisdiction shall remain a matter for the Cantons as before

(3) The Confederation is entitled to grant subsidies to the Cantons for the construction of penitentiaries, workhouses and reformatories and for

penal reforms. It is also entitled to assist institutions for the protection of neglected children.

#### 64ter. Victim Protection

The Confederation and the Cantons shall ensure that the victims of criminal acts against life and the person receive assistance. This shall include appropriate compensation if, in consequence of the criminal act, the victims get into financial difficulties.

#### 65. Capital Punishment

- (1) No death sentence may be passed for political crimes.
- (2) Corporal punishments are prohibited.

#### 66. Deprivation of Political Rights

Federal legislation shall fix the limits within which a Swiss citizen can be deprived of his political rights.

#### 67. Extradition

Federal legislation shall lay down the necessary provisions concerning the extradition of the accused from one Canton to another, however, extradition may not be made compulsory for political and press offences.

#### 68. Statelessness

Measures to secure citizenship for Stateless persons and to prevent new cases of Statelessness shall be a matter for Federal legislation.

#### 69. Contagious Diseases

The Confederation is entitled to enact legislation in order to combat contagious, widespread and particularly dangerous diseases of man and animals.

#### 69bis. Consumer Protection

- (1) The Confederation is entitled to legislate
  - a) on trade in foodstuffs,
  - b) on trade in other consumer goods insofar as they may endanger life or health.
- (2) The Cantons shall implement these provisions.
- (3) Control of imports at the national frontiers shall be exercised by the Confederation.

#### 69ter. Immigration, Asylum

- (1) The Confederation is entitled to legislate on immigration, emigration, residence and establishment of aliens.
- (2) The Cantons shall decide on residence and settlement in accordance with Federal legislation. The Confederation is, however, entitled to give final decisions on
  - a) Cantonal authorizations for protracted residence and settlement as well as exceptions made in cases of hardship.

- b) violations of treaties concerning establishment,
- c) Cantonal expulsion orders valid for the whole territory of the Confederation,
- d) refusal to grant asylum

**70. Expulsion**

The Confederation has the right to expel from its territory aliens who endanger the internal or external security of Switzerland

## **CHAPTER II**

### **FEDERAL AUTHORITIES**

**Part I—Federal Assembly***Sub-section 0—General Provisions***71. Federal Assembly**

Subject to the rights of the people and the Cantons (Articles 89 and 121, at the present time Articles 89, 89bis, 120, 121, 121bis and 123) the supreme power of the Confederation shall be exercised by the Federal Assembly which consists of two sections or councils, to wit

- A the National Council,
- B the Council of States

*Sub-section A—National Council***72. National Council Membership**

(1) The National Council shall be composed of 200 representatives of the Swiss people

(2) The seats shall be distributed among the Cantons and Half-Cantons in proportion to their resident population, each Canton and Half-Canton being entitled to one seat at least

(3) A Federal law shall lay down detailed provisions

**73. National Council Elections**

(1) The elections to the National Council shall be direct. They shall take place according to a system of proportional representation, each Canton or Half-Canton forming one electoral district

(2) Federal legislation shall lay down detailed provisions for the implementation of this principle

**74. National Council Electorate**

(1) Swiss men and women shall have the same rights and the same duties in matters of Federal elections and other Federal polls

(2) Each Swiss man and each Swiss woman who has completed his or her 18th year and who has not been deprived of his or her political rights by the

legislation of the Confederation or of the Canton where he or she is resident has the right to participate in such elections and other polls

(3) The Confederation can decree uniform legal provisions on the right to participate in elections and other polls on Federal matters

(4) The right at Cantonal level shall remain the affair of Cantonal and Communal voting and elections

#### **75. National Council Eligibility**

Every lay Swiss citizen entitled to vote is eligible for membership of the National Council

#### **76. National Council Election Period**

The National Council shall be elected every four years and each time the whole Council is subject to election

#### **77. National Council Incompatibilities**

Members of the Council of States and of the Federal Council and officials appointed by the latter may not at the same time be members of the National Council

#### **78. National Council Presidency**

(1) The National Council shall elect from among its members a President and a Vice President for each ordinary and extraordinary session

(2) The member who has been President during an ordinary session is not eligible to be President or Vice President for the following ordinary session. The same member may not be Vice President during two successive ordinary sessions

(3) When the votes are equal the President shall have the casting vote, at elections he shall have the same voting rights as every other member

#### **79. National Council Allowances**

Members of the National Council shall be paid an allowance by the Federal treasury

### *Sub-section B—Council of States*

#### **80. Council of States Membership**

The Council of States shall consist of 16 representatives of the Cantons. Each Canton shall elect two representatives. In the halved Cantons each Half-Canton shall elect one representative

#### **81. Council of States Incompatibilities**

Members of the National Council and of the Federal Council may not at the same time be members of the Council of States

#### **82. Council of States Presidency**

(1) The Council of States shall elect from among its members a President and a Vice President for each ordinary and extraordinary session

(2) Neither the President nor the Vice President may be elected from among the representatives of the Canton from which the President of the immediately preceding ordinary session has chosen

(3) Representatives of the same Canton may not hold office as Vice Presidents for two successive ordinary sessions

(4) When the votes are equally divided, the President shall decide, in elections, he shall vote like any other member

### **83. Council of States Allowances**

Members of the Council of States shall be paid an allowance by the Cantons

### *Sub-section C—Powers of the Federal Assembly*

### **84. Federal Assembly Authority**

The National Council and the Council of States shall deal with all matters which, according to this Constitution, fall within the competence of the Confederation and have not been attributed to another Federal authority

### **85. Federal Assembly Competencies**

The matters within the competence of the two Councils are in particular the following

(1) Laws on the organization and the mode of election of the Federal authorities

(2) Laws and decrees on matters which the Constitution places within the competence of the Confederation

(3) Salaries and allowances of the members of the Federal authorities and the Federal Chancery, setting up of permanent Federal offices and determination of the corresponding salaries

(4) Election of the Federal Council, the Federal Court, the Chancellor and the General of the Federal Army Federal legislation may entrust to the Federal Assembly the right to make or to confirm other appointments

(5) Alliances and treaties with foreign States as well as approval of treaties of Cantons among themselves or with foreign States However, such treaties of the Cantons shall only be submitted to the Federal Assembly if the Federal Council or another Canton raises an objection to them

(6) Measures for the external security as well as for the preservation of the independence and neutrality of Switzerland, declaration of war and conclusion of peace

(7) Guarantee of the constitutions and the territory of the Cantons, interventions pursuant to this guarantee, measures for internal security and the preservation of peace and order, amnesty and pardon

(8) Measures aimed at the implementation of the Federal Constitution, the guaranteeing of the Cantonal constitutions and the carrying out of Federal obligations

- (9) The right to dispose over the Federal Army
- (10) The drawing up of the annual budget and approval of the State accounts as well as decrees on the floating of loans
- (11) General supervision of Federal administration and justice
- (12) Complaints against decisions of the Federal Council concerning administrative disputes (Article 113)
- (13) Conflicts of competence between Federal authorities
- (14) Revision of the Federal Constitution

#### **86. Federal Assembly Sessions**

(1) Both Councils shall meet once a year for an ordinary session on a day to be determined by their rules of procedure

(2) They shall be convened for an extraordinary session by decision of the Federal Council or on request from one quarter of the members of the National Council or from five Cantons

#### **87. Federal Assembly Competency**

In order that a Council may deliberate validly, the absolute majority of its members must be present

#### **88. Federal Assembly Majority Rule**

In the National Council and the Council of States decisions are taken by the absolute majority of the members casting a vote

#### **89. Federal Assembly Legislation**

(1) Federal laws and Federal decrees must be approved by both Councils

(2) Federal laws and generally binding Federal decrees must be submitted to the people for approval or rejection if 50,000 Swiss citizens entitled to vote or eight Cantons so demand

(3) Paragraph (2) shall be applicable also to international treaties which

- a) are of unspecified duration and cannot be denounced,
- b) provide for adherence to an international organization,
- c) entail a multilateral unification of the law

(4) By a decision of both Houses paragraph (2) shall be applicable to other treaties

(5) Adherence to collective security organizations or to supranational bodies shall be submitted to the vote of the people and the Cantons

#### **89bis Federal Assembly Decrees**

(1) Generally binding Federal decrees whose entry into force ought not to be delayed may be put into effect immediately by a majority of all members of each of the two Councils, the period of validity is to be limited

(2) If 50,000 Swiss citizens entitled to vote or eight Cantons request a popular vote the decrees put immediately into effect shall lose their validity

one year after their adoption by the Federal Assembly if they have not been approved by the people during that period, in that case, they may not be renewed

(3) Decrees put immediately into effect which have no constitutional basis must be approved by the people and the Cantons within one year after their adoption by the Federal Assembly, failing this, they shall lose their validity after the lapse of this year and may not be renewed

#### **90. Federal Assembly Legislation Formalities**

Federal legislation shall lay down the necessary rules concerning the formalities and time-limits for popular votes

#### **91. Federal Assembly Voting Procedure**

Members of both Councils shall vote without instructions

#### **92. Federal Assembly Joint Meetings**

Each Council shall deliberate separately. However, for elections [Article 85 (4)], for the exercise of the right of pardon and when deciding conflicts of competence [Article 85 (13)], both Councils shall assemble for a joint meeting under the chairmanship of the President of the National Council and decisions shall be taken by the majority of the members of both Councils casting a vote

#### **93. Federal Assembly Initiative**

(1) Each of the two Councils and each of their members have the right of initiative

(2) The Cantons may exercise the same right by correspondence

#### **94. Federal Assembly Publicity**

As a rule, the meetings of both Councils shall be public

### **Part II—Federal Council**

#### **95. Federal Council**

The supreme executive and governing authority of the Confederation is a Federal Council composed of seven members

#### **96. Federal Council Elections**

(1) The members of the Federal Council shall be elected by the Federal Assembly for four years from among all the Swiss citizens who are eligible for the National Council. However, not more than one member may be elected from the same Canton

(2) The Federal Council shall be elected anew after each renewal of the National Council

(3) Vacancies occurring during the four year period shall be filled in the following session of the Federal Assembly for the remainder of the term

#### **97. Federal Council Incompatibilities**

Members of the Federal Council may not hold another office, be it in the service of the Confederation or in a Canton, nor carry on any other profession

**98. Federal Council Presidency**

(1) The Chairman of the Federal Council shall be the President of the Confederation, he and the Vice President shall be chosen by the Federal Assembly from among the members of the Council for a term of one year

(2) The outgoing President is not eligible to be President or Vice President for the following year. The same member may not hold the office of Vice President for two successive years

**99. Federal Council Salaries**

The President of the Confederation and the other members of the Federal Council shall draw a salary from the Federal treasury.

**100. Federal Council Competency**

In order that its deliberations may be valid, at least four members of the Federal Council must be present

**101. Federal Council Privileges**

Members of the Federal Council may participate in the debates of both sessions of the Federal Assembly in a consultative capacity and have the right to voice proposals concerning the subject-matter under discussion

**102. Federal Council Powers**

The powers and obligations of the Federal Council, within the limits of this constitution, are in particular the following

(1) It shall conduct Federal affairs in conformity with the Federal laws and decrees

(2) It shall ensure compliance with the constitution, the laws and the decrees of the Confederation as well as with the provisions of the Federal concordats, it shall, on its own initiative or pursuant to a request, take the necessary steps to secure their enforcement to the extent that such requests are not among those which fall within the jurisdiction of the Federal Court according to Article 113

(3) It shall ensure that the guarantee of the Cantonal Constitutions is not infringed

(4) It shall submit to the Federal Assembly drafts of laws and decrees and shall give its opinion on proposals submitted to it by the Councils of the Cantons

(5) It shall give effect to the Federal laws and decrees, the judgments of the Federal Court as well as to the settlements or arbitral awards in connection with disputes between Cantons

(6) It shall make the appointments which are not entrusted to the Federal Assembly, the Federal Court or another authority

(7) It shall examine the agreements of the Cantons among themselves and with foreign States and shall approve them if they are admissible [Article 85 (5)]

(8) It shall watch over the external interests of the Confederation, particularly its international relations, and it shall be in charge of external affairs generally

(9) It shall watch over the external security of Switzerland and over the preservation of its independence and neutrality

(10) It shall ensure the internal security of the Confederation and the preservation of peace and order

(11) In urgent cases and if the Federal Assembly is not meeting, the Federal Council is entitled to raise the necessary troops and to dispose of them, with the reservation that it shall summon the Federal Assembly immediately if the troops raised exceed 2000 men or remain under arms for more than three weeks.

(12) It shall be in charge of the military affairs of the Confederation and of all branches of the Federal administration

(13) It shall examine the laws and decrees of the Cantons which require its approval, it shall supervise such branches of Cantonal administrations as are placed under its control

(14) It shall manage the finances of the Confederation, draft the budget and render the accounts of receipts and expenditure

(15) It shall supervise the official activities of all officials and employees of the Federal administration

(16) At each ordinary session, it shall render an account of its activities to the Federal Assembly and submit a report on the internal as well as on the external State of the Confederation and it shall draw the Federal Assembly's attention to such measures as it deems useful for the promotion of common prosperity. It shall also submit reports on specific questions if the Federal Assembly or one of its sections so request

### **103. Federal Council Principles**

(1) The tasks of the Federal Council shall be distributed among its members according to departments. Decisions are taken by the Federal Council as a body

(2) Federal legislation may authorize the departments or the services thereof to settle certain matters directly, subject to the right of appeal

(3) Federal legislation shall determine in which cases the appeal shall be referred to a Federal administrative court

### **104. Federal Council Advice**

The Federal Council and its departments are entitled to call in experts on specific matters

## **Part III—Federal Chancery**

### **105. Federal Chancery**

(1) A Federal Chancery, headed by the Chancellor of the Confederation, shall act as the secretariat of the Federal Assembly and the Federal Council

(2) The Chancellor shall be elected by the Federal Assembly for a term of four years, at the same time as the Federal Council

(3) The Federal Chancery shall be placed under the special supervision of the Federal Council

(4) Federal law shall determine the details of the organization of the Federal Chancery

#### Part IV—Federal Court

##### 106. Federal Court

(1) A Federal Court shall be established for the administration of justice to the extent that this is a Federal concern

(2) In criminal cases (Article 112) a jury shall be instituted to pronounce a verdict

##### 107. Federal Court Membership

(1) The members of the Federal Court and their substitutes shall be elected by the Federal Assembly which shall ensure that the three official languages of the Confederation are represented

(2) The organization of the Federal Court and of its divisions, the number of its members and substitutes, the duration of their term of office and their salary shall be determined by law

##### 108. Federal Court Eligibility, Incompatibilities

(1) Any Swiss citizen who is eligible for the National Council may be appointed to the Federal Court

(2) The members of the Federal Assembly and of the Federal Council and the officials appointed by these authorities may not at the same time be members of the Federal Court

(3) Members of the Federal Court may not hold another office, be it in the service of the Confederation or in the Cantons, or carry on any other occupation or trade

##### 109. Federal Court Organization

The Federal Court shall organize its chancery and appoint its staff

##### 110. Federal Court Civil Jurisdiction

(1) The Federal Court shall adjudicate civil law disputes

1) between the Confederation and the Cantons,

2) between the Confederation and corporations or private persons if the subject of the dispute is of a degree of importance to be determined by Federal legislation and if those corporations or private persons are plaintiffs,

3) between the Cantons,

4) between Cantons and corporations or private persons if the subject of the dispute is of a degree of importance to be determined by the Federal legislation and if one of the parties so requests

(2) The Federal Court shall also adjudicate disputes concerning Statelessness and disputes between Communes of different Cantons concerning questions of citizenship

#### **111. Federal Court Choice of Jurisdiction**

The Federal Court is also bound to adjudicate other cases if both parties agree to refer them to it and if the subject of the dispute is of a degree of importance to be determined by Federal legislation

#### **112. Federal Court Criminal Jurisdiction, Jury**

The Federal Court shall pass judgment, with the assistance of a jury to give a verdict on the facts, in criminal cases concerning

1) High treason against the Confederation, revolt and violence against the Federal authorities,

2) crimes and offences against the law of nations,

3) political crimes and offences which are the cause or the consequence of disorders which give rise to an armed Federal intervention

4) Charges against officials appointed by a Federal authority, if the latter refers them to the Federal Court

#### **113. Federal Court Public Law Jurisdiction**

(1) The Federal Court shall further adjudicate

1) Conflicts of competence between Federal authorities on the one hand and authorities of the Cantons on the other,

2) disputes between Cantons in the field of public law,

3) complaints concerning the violation of the constitutional rights of citizens as well as individual complaints concerning the violation of concordats and international treaties

(2) The administrative disputes which shall be specified by Federal legislation are excepted

(3) In all aforementioned instances, the Federal Court shall apply the laws and generally binding decree adopted by the Federal Assembly, as well as the international treaties approved by this Assembly

#### **114. Federal Court Conferred Jurisdiction**

Federal legislation may also confer jurisdiction upon the Federal Court on matters other than those specified in Articles 110, 112 and 113, it may, in particular, with regard to the enactment of the Federal laws provided for in Article 64, determine the competence necessary to ensure their uniform application

### **Part IVbis—Federal administrative and disciplinary jurisdiction**

#### **114bis. Federal Administrative Court**

(1) The Federal Administrative Court shall adjudicate administrative disputes falling within the scope of the Confederation and referred to it by Federal legislation

(2) The Administrative Court shall also adjudicate disciplinary cases of the Federal administration referred to it by Federal legislation insofar as such cases shall not be referred to a special jurisdiction

(3) The Court shall apply the Federal legislation and the treaties approved by the Federal Assembly

(4) The Cantons are entitled, subject to the approval of the Federal Assembly, to refer to the Federal Administrative Court for adjudication administrative disputes falling within the scope of their competence

(5) The organization of Federal administrative and disciplinary jurisdiction and its procedure shall be determined by law

#### **Part V—Miscellaneous Provisions**

##### **115. Seat of Federal Authorities**

Everything concerning the seat of the Federal authorities shall be a matter of Federal legislation

##### **116. Languages**

(1) German, French, Italian and Romansh are the national languages of Switzerland

(2) German, French and Italian are declared to be the official languages of the Confederation

##### **117. Official Liability**

The officials of the Confederation are responsible for their official activities. A Federal law shall specify the scope of this responsibility

### **CHAPTER III**

## **REVISION OF THE FEDERAL CONSTITUTION**

##### **118. Constitutional Revision**

At any time, the Federal Constitution may be revised wholly or in part

##### **119. Constitutional Total Revision**

The total revision shall be carried out in accordance with the forms laid down for Federal legislation

##### **120. Constitutional Total Revision Procedures**

(1) If one section of the Federal Assembly decides on a total revision of the Federal Constitution and the other does not consent or if 100,000 Swiss citizens entitled to vote demand the total revision of the Federal Constitution, the question whether such a revision should take place or not must be submitted in both cases to the vote of the Swiss people

(2) If in either of these cases the majority of the Swiss citizens casting a vote give an affirmative answer, both Councils shall be elected anew in order to undertake the revision

**121. Constitutional Partial Revision Procedures**

(1) Partial revision may be carried out either by means of a popular initiative or in accordance with the forms laid down or Federal legislation

(2) The popular initiative consists of a request, presented by a hundred thousand Swiss citizens entitled to vote, aiming at the introduction, setting aside or modification of specified Articles of the Federal Constitution.

(3) If by means of a popular initiative several different provisions are to be modified or introduced into the Federal Constitution, each one must be the subject of a separate initiative request.

(4) An initiative request may consist of a general proposal or take the form of a complete draft

(5) If such a request consists of a general proposal and if it meets with the approval of the Federal Chambers, the latter shall prepare a partial revision along the lines of the proposal and submit their draft to the people and the Cantons for adoption or rejection. If the Federal Chambers do not approve of the request, the question of partial revision shall be submitted to the decision of the people; if the majority of the Swiss citizens casting a vote decide in the affirmative, the Federal Assembly shall undertake the revision in conformity with the decision of the people.

(6) If the request is in the form of a complete draft and if it meets with the approval of the Federal Assembly, the draft shall be submitted to the people and the Cantons for adoption or rejection. If the Federal Assembly disagrees, it may prepare its own draft or recommend the rejection of the proposed draft and submit its own draft or recommendation of rejection together with the draft proposed by the initiative to the decision of the people and the Cantons.

**121bis. Constitutional Alternative Revision Procedures**

(1) If the Federal Assembly draws up a counter-draft, three questions shall be submitted to the voters on the same ballot paper. Every voter can State unreservedly.

1) whether he prefers the popular initiative to the law in force,

2) whether he prefers the counter-draft to the law in force,

3) which of the two texts should enter into force if the people and the Cantons prefer both texts to the law in force

(2) The absolute majority shall be determined for each question separately. Unanswered questions shall not count.

(3) If both the popular initiative and the counter-draft are accepted, the result of the third question shall decide the issue. The text which obtains more of the people's and Cantons' votes on this question shall come into force. If, on the other hand, one text obtains more of the people's votes and the other more of the Cantons' votes, then neither of the texts shall come into force

**122. Popular Initiative Procedures**

A Federal law shall determine the procedure to be followed in the case of popular initiative requests and votes on the revision of the Federal Constitution

**123. Constitutional Revision Approval**

(1) The revised Federal Constitution or the revised part of it as the case may be, shall enter into force if it has been approved by the majority of the Swiss citizens casting a vote and the majority of the Cantons

(2) In order to determine the majority of the Cantons the vote of each Half-Canton is counted as half a vote

(3) The result of the popular vote in each canton is considered to be the vote of that Canton

**CHAPTER IV****TRANSITIONAL PROVISIONS****1. Military Finances Transition**

(1) The revenue from the posts and from customs duties shall be distributed according to the existing system until the Confederation shall in fact take over the military expenses borne up to now by the Cantons

(2) Furthermore, Federal legislation shall ensure that losses which might result for the finances of certain

Cantons from the combined effect of the changes introduced by Articles 20, 30, 36 (2), and 42 e) will affect them gradually and become fully effective only after a transitional period of several years

(3) Cantons which, at the time of the coming into force of Article 20 have not fulfilled the military obligations placed upon them by the former Federal Constitution and the Federal laws, are bound to carry them out at their own expense

**2. Derogation of Law**

The provisions of existing Federal laws, concordats, Cantonal Constitutions, and laws which are inconsistent with the present Federal Constitution shall cease to be in force with the adoption of the latter or, as the case may be, the enactment of the Federal laws it provides for

**3. Federal Court Transition**

The new provisions concerning the organization and jurisdiction of the Federal Court shall only enter into force after the enactment of the pertinent Federal laws

**4. Schooling Transition**

(1) A time-limit of five years shall be granted to the Cantons for the introduction of free public primary education (Article 27)

(2) They shall be given a time-limit of five years to introduce the beginning of the school year in accordance with Article 27 (3bis)). The Federal Council shall take measures in accordance with Article 27 (4) by means of an Ordinance. It shall notify the Federal Assembly of this.

### 5. Liberal Profession Transition

Persons carrying on a learned profession, who prior to the enactment of the Federal legislation provided for in Article 33 have obtained a certificate of competence from a Canton or from an authority representing several Cantons pursuant to a concordat, shall be entitled to carry on their profession throughout the Confederation.

### 6. Privilege Tax Transition

For the years 1959 and 1960, the Cantons' share of the receipts from the privilege tax on exemption from military service, including their fee for collecting it, is fixed at 31 per cent, as from 1st January, 1961, this share shall be replaced by a collecting fee of 20 per cent of the gross receipts. All contrary provisions of the Federal legislation shall cease to be in force.

### 7. Freight Document Transition

(1) The stamp duty on freight documents shall no longer be levied after 1st January, 1959. All contrary provisions of the Federal legislation shall cease to be in force.

(2) Freight documents for the transport of luggage, animals and goods by the Federal railways and by transport enterprises which have been granted a concession by the Confederation shall not be subjected by the Cantons to stamp or registration duty.

### 3. Additional Taxes Transition

(1) Subject to Federal Acts within the meaning of Article 41ter, the provisions applicable on 31st December 1981 to turnover tax, direct Federal Tax (formerly defence tax), and beer tax shall remain in force with the following amendments.

(2) With effect from 1st October 1982 the following provisions shall apply to the turnover tax:

a) the tax rate shall amount to 6.2 per cent of returns in the case of retail deliveries and 9.3 per cent in the case of wholesale deliveries,

b) painters and sculptors shall be exempt from taxation in respect of the works of art which they themselves have created.

(3) For the tax years after 31st December 1982 direct Federal Tax shall be regulated as follows:

a) allowances deducted from the income of individuals shall amount to

- 4000 francs for married persons,
- 2000 francs for each child,
- 2000 francs for each needy person,

— 3000 francs for widowed, divorced or single taxpayers who run a household containing children or needy persons,

— for insurance premiums and interest from savings capital together.

2500 francs for widowed, divorced or single persons

3000 francs for married persons,

— 4000 francs from the income from gainful activity of the spouse, when both husband and wife pursue a gainful activity

b) the amount of tax due from individuals shall be reduced as follows

— 30 per cent on the first 100 francs of the annual tax,

— 20 per cent on the next 300 francs of the annual tax,

— 10 per cent on the next 500 francs of the annual tax

c) the reduction granted up to the end of 1982 to married persons on the amount of tax shall be cancelled,

d) a Vice Chairman shall be appointed to the Federal Commission for Remission of direct Federal Tax. The competent Cantonal authority shall rule on applications for remission of direct Federal Tax up to a tax amount of 1000 francs

(4) The Federal Council shall adapt its decrees on turnover tax and defence tax to the amendments in paragraphs (2) and (3). In the case of turnover tax it shall also regulate the effects of passing on the tax for the transitional period. The term "defence tax" shall be replaced by "direct Federal Tax" in all laws and regulations

## 9. Tax Amnesty Transition

(1) During the years 1969 to 1973, the Confederation can institute a special tax amnesty for Federal, Cantonal and Communal taxes

(2) Federal legislation shall determine the date of this amnesty and specify its conditions and effects

## 10. Cantonal Equalization Transition

(1) Until the introduction of new rules for financial equalization among the Cantons, the present 6 per cent commission of the Cantons shall be replaced as from 1st January 1972 by a Cantonal share of 12 per cent of the net withholding tax yield. Federal legislation shall determine the share of each Canton

(2) In years when the withholding tax exceeds 30 per cent the Cantons' share shall amount to 10 per cent

## 11. Retirement and Disabled Insurance

(1) Insofar as the provisions for Federal insurance do not cover basic requirements, as defined in Article 31 *supra*, (2) the Confederation shall grant the Cantons subsidies for the financing of supplementary allowances. For this purpose it may use fiscal resources intended for the financing of the Federal Insurance Scheme. The maximum contribution of the public authorities

stipulated in Article 34quater (2)(b) and (c), shall be calculated so as to take into account these Federal subsidies and the corresponding contributions of the Cantons.

(2) Those insured who belong to the relevant generation at the time of the introduction of the system for obligatory professional insurance, in accordance with Article 34quater (3), shall be able to benefit from the minimum legally prescribed protection after a period whose duration, calculated from the time the law comes into effect, shall vary between 10 and 20 years, according to the amount of their income. The law shall specify those persons belonging to the relevant generation at the time of the introduction, and shall determine the minimum allowance granted during the transitional period, it shall take into account, by special provisions, the situation of those insured for whom an employer had made insurance arrangements prior to the law's coming into effect. The contributions necessary for covering the allowances must reach their normal level after a period of no more than five years.

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#### 16. Supplementary Tax Transition

Subject to amendment by legislation, the supplementary tax on motor fuels shall amount to 30 centimes per liter

#### 17. Annual Road Charge Transition

(1) The Confederation shall levy on domestic and foreign motor vehicles and trailers with a total weight of over 3.5 tons each an annual charge for the use of all roads open to general traffic

(2) This charge shall amount to

- a) for lorries and articulated motor vehicles
  - over 3.5 and up to 11 tons 500 francs
  - over 11 and up to 16 tons 1500 francs
  - over 16 and up to 19 tons 2000 francs
  - over 19 tons 3000 francs
- b) for trailers
  - over 3.5 and up to 8 tons 500 francs
  - over 8 and up to 10 tons 1000 francs
  - over 10 tons 1500 francs
- c) for coaches 500 francs

(3) In the case of vehicles which are not on the road in Switzerland for the whole year, the Federal Council shall fix graduated rates commensurate with the length of time involved, it shall take into consideration the cost of collecting the charge

(4) The Federal Council shall regulate the implementation by Ordinance. It can determine the rates, within the meaning of paragraph (2), for special categories of vehicle, exempt specific vehicles from the charge and issue special regulations, particularly for journeys in the frontier area. Such regulations shall not result in vehicles registered abroad being treated more favorably than Swiss vehicles. The Federal Council can provide for fines for contraventions. The Cantons shall collect the charge for vehicles registered in Switzerland.

(5) This charge shall be levied for a period of 10 years. Before the expiry of this time limit the charge can be wholly or partially abolished by legislation.

#### **18 National Highway Charge Transition**

(1) The Confederation shall levy on domestic and foreign motor vehicles and trailers up to a total weight of 3.5 tons each an annual charge of 30 francs for the use of the first and second class national highways.

(2) The Federal Council shall regulate the implementation by ordinance. It can exempt specific vehicles from the charge and issue special regulations, particularly for journeys in the frontier area. Such regulations shall not result in vehicles registered abroad being treated more favorably than Swiss vehicles. The Federal Council can provide for fines for contraventions. The Cantons shall collect the charge for vehicles registered in Switzerland and monitor the keeping of the regulations by all vehicles.

(3) This charge shall be levied for a period of 10 years. Before the expiry of this time limit the charge can be wholly or partially abolished by legislation.

#### **19. Nuclear Energy Moratorium Transition**

For a period of 10 years after the adoption of this transitional provision by the people and the Cantons no planning, building, start-up, or operating permits shall be issued under Federal law for new installations for the production of nuclear energy (nuclear power stations or nuclear reactors for heating purposes). Installations of the kind for which building permission under Federal law was not granted up to 30th September 1986 count as new.

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# 38

## CONSTITUTION OF UNITED KINGDOM

### CHAPTER 1 HUMAN RIGHTS

#### PART 1 LEGAL FRAMEWORK

##### 1. Overview

There is no written constitution or comprehensive Bill of Rights, Britain's constitution is to be found partly in conventions and customs and partly in statute. The Act known as the Bill of Rights 1689 deals with the exercise of the royal prerogative and succession to the Crown.

The British legal system provides some remedies to deal with human rights abuses. For instance, the remedy of 'habeas corpus' secures the individual's right to freedom from any unlawful or arbitrary detention.

Parliament, however, has power to enact any law and change any previous law. There is no fundamental distinction between 'public law' and 'private law'. Any person can take proceedings against the Government or a local government authority to protect his or her legal rights and to obtain a remedy for any injury suffered.

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Information Source: This document is not a written Constitution, but rather a compilation of information material originally provided by the British Embassy together with some amendments.

Britain has not generally codified its law and courts adopt a relatively strict and literal approach to the interpretation of statutes. The ratification of a treaty or international convention does not make it automatically part of the domestic law. Where necessary, the Government amends domestic law to bring it in line with the convention. Because of Britain's membership of the European Community, Community law is part of British law and takes precedence in the event of conflict between the two.

## PART 2

### INTERNATIONAL HUMAN RIGHTS

#### 2 International Arrangements

Since the Universal Declaration of Human Rights is not a legally binding document, the UN General Assembly adopted, in 1966, the 'International Covenant on Economic, Social and Political Rights' and the 'International Covenant on Civil and Political Rights'. Britain ratified both covenants in 1976. Britain is bound by the Council of Europe's 1953 'European Convention for the Protection of Human Rights and Fundamental Freedoms'. The Convention allows individual petitions against governments to the European Commission on Human Rights, if all possible domestic remedies have been exhausted. Since 1966 Britain has accepted the right of individual petition under the Convention and the compulsory jurisdiction of the European Court of Human Rights. The outcome of some cases has led to changes in British law to improve human rights, for example the abolition of corporal punishment in State schools and improved rights for prisoners. Britain is not a party to the Convention's Fourth Protocol (Freedom of Movement) because of inconsistency with some aspects of the United Kingdom immigration control system nor the Sixth Protocol (abolition of the death penalty).

## PART 3

### GENERAL PROVISIONS

#### 3 Human Dignity

All human beings are born free and equal in dignity and rights, endowed with reason and conscience, and should act towards one another in a spirit of brotherhood.

#### 1 Equality

Everyone is equally entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

(1) Sex Discrimination. It is unlawful to treat one person less favourably than another on grounds of sex when offering employment. This also applies to education courses and the provision to the public of housing, goods, facilities and services such as insurance. Advertisements indicating an intention to discriminate in this way are also illegal.

(2) **Equal Pay** Women employed by the same employer can claim the same pay as men for work of equal value. This right also applies to work which is the same or broadly similar or work which is judged equal by a job evaluation scheme. The same rights apply to men.

(3) **European Community Legislation** States are obliged to eliminate discrimination in State Social Security Schemes providing protection against sickness, unemployment, invalidity, old age, accidents at work or occupational diseases.

(4) **Racial Equality** It is unlawful to treat one person less favourably than another on grounds of race, colour, nationality or ethnic or national origins. This applies to employment (including training), education, and the provision to the public of housing, goods, facilities and services, and premises. Discriminatory advertisements are also unlawful.

## PART 4 INTEGRITY

### 5. Personal Integrity

Everyone has the right to life, Liberty, and the security of person.

(1) **Taking of Life** The mandatory penalty for murder is imprisonment for life. Anyone sent to prison for murder is liable to be detained for the rest of his or her life but may be released on license.

(2) **Control of Firearms** There is strict licensing and control over the sale of firearms and their possession. Private ownership of highly dangerous weapons is banned.

(3) **Victims of violent crime, including foreign nationals, may apply for compensation under the Criminal Injuries Compensation Scheme.** In 1990 the Government published its Victims' Charter setting out for the first time the rights and expectations of victims of violent and other crime. There are more than 350 Victim Support Schemes with over 6,000 trained volunteers which help well over 500,000 people a year.

(4) **In Northern Ireland the security forces have special powers to search, question and arrest suspected terrorists.** Throughout Britain the maximum period for which the police can hold a suspected terrorist is 48 hours. This period can be extended for up to five days with the consent of the appropriate Secretary of State. The Government has powers to ban terrorist organizations in Northern Ireland and in the rest of Britain.

(5) **Incitement to racial hatred is a criminal offence.** It is against the law to use threatening, abusive, or insulting words or to display, publish or distribute such material. It is also an offence to possess racially inflammatory material, the police having powers of search, seizure and forfeiture.

## 6 Abolishment of Slavery

No one may be held in slavery or servitude, slavery and the slave trade are prohibited

## 7. Punishment

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment

(1) If a police officer fails to comply with this provision, he or she can be disciplined and the courts may reject any evidence so obtained

(2) Custody Under the Criminal Justice Act 1991, the offence must be so serious that it merits custody. Longer custodial sentences — within the statutory maxima — will be given to persistent violent and sexual offenders in order to protect the public from serious harm

(3) Most prisoners are eligible for remission of one-third of their sentence. Release is unconditional and does not involve any official supervision in the community. It may be forfeited for serious misconduct in prison

(4) Parole. Prisoners serving more than 12 months can be released conditionally on parole when they have served one-third of the sentence, or six months, whichever expires the later. Three-quarters of prisoners serving sentences of less than two years receive parole. The parole license remains in force until the date on which the prisoner would otherwise have been released from prison

(5) Life Sentence Prisoners. People serving life sentences for the murder of police and prison officers, terrorist murders, murder by firearms in the course of crime or the sexual or sadistic murder of children are normally detained for at least 20 years. Life sentence prisoners are released on life license and are subject to recall should their behavior suggest that they might again be a danger to the public

## 8. Marriage and Family

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution

(2) Marriage shall be entered into only with the free and full consent of the intending spouses

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State

(4) All marriages are registered by the State. It is unlawful to force anyone to marry against his or her will or to bring about a marriage by fraudulent means

(5) Members of the family are in an advantageous position in matters of succession. If death occurs without a valid will, the spouse and children of the deceased have priority. Children have equal rights of inheritance from parents whether the parents are married or unmarried

**9. Property**

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property

(3) Compensation is paid for any losses suffered through compulsory purchase or the deterioration of property as a result of activities by public authorities

**PART 5****LEGAL PROTECTION****10. Dignity before courts**

Everyone has the right to recognition everywhere as a person before the law

**11. Equality before the law**

All are equal before the law and are entitled without any discrimination to equal protection of the law.

**12. Redress and Remedies**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law

(1) Redress and Remedies Everyone has the right of access to the courts and to the legal remedies available there

(2) Legal aid schemes help people with limited resources to meet the cost of work done by a lawyer. Solicitors give legal advice and assistance to suspects at police stations

(3) All State authorities are subject to judicial control. Government departments and public authorities can be sued for compensation for wrongful acts or breach of contract in the same way as individuals

**13. Fair Trial**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him

(1) Civil and criminal cases are heard by an independent judiciary

(2) In criminal cases the prosecution must prove guilt beyond reasonable doubt Following a series of miscarriages of justice which took place in the mid 1970s, the Government has set up a Royal Commission to examine the effectiveness of the criminal justice system

(3) In jury trials the Judge decides questions of law, sums up the evidence for the jury, and discharges the accused or passes sentence A jury is independent of the judiciary Any attempt to interfere with the jury once it is sworn in is a criminal offence

(4) Publicity Court proceedings are normally held in public and reporters from the media are admitted. In rape cases, the identity of the complainant cannot be reported.

#### 14. Presumption of Innocence

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

### PART 6 LIBERTIES

#### 15 Personal Liberty

No one shall be subjected to arbitrary arrest, detention, or exile. Everyone has a legal right to personal liberty. No one can be arrested with the exception of those suspected of committing a crime, those failing to comply with certain civil court orders, or individuals in contempt of a superior court or of Parliament. An arrest to enforce a court order in civil proceedings can only be made under a warrant issued by a court or by a power of arrest granted by the court in cases of domestic violence.

(1) Arrests in Criminal Proceedings: The police have power to arrest a suspect without a warrant if he or she is reasonably suspected of involvement in an arrestable offence, that is, one where the maximum penalty is five years imprisonment or more. They must normally obtain a warrant before arresting someone for other offences, an immediate arrest without a warrant may, however, take place if the police believe it is not possible or appropriate to issue a summons to appear in court, for instance where a suspect refuses to give a name and address.

(2) An arrested person has the right to

- consult a solicitor,
  - ask the police to notify a relative or other named person likely to take an interest in his or her welfare, and
  - consult the code of practice regarding treatment in police custody.
- The police may delay the exercise of the first two of these rights for up to 36 hours.

(3) Consultation: Solicitors are available on a 24-hour basis to offer free legal advice for people being questioned at police stations. The police must caution a suspect before any questions are put for the purpose of obtaining evidence. The caution informs the suspect that he or she is entitled to refuse to answer questions — the so-called right of silence.

(4) The suspect may not normally be detained for more than 24 hours without charge. In the case of a suspect arrested in connection with a serious arrestable offence, however, he or she may be detained for up to 36 hours without charge on the authority of a senior police officer, if the police wish to detain the suspect for longer than 36 hours, they must obtain authority from a court, which may not grant authority for a period beyond 96 hours from first detention. Reviews must be made of a person's detention at regular intervals to check whether the criteria for detention are still satisfied. If they are not, the person must be released immediately.

(5) Tape recording of interviews with suspected offenders at police stations are universal practice.

(6) Habeas Corpus. Anyone who thinks that his or her detention is illegal may apply to the High Court for a writ of habeas corpus against the person detaining him or her. If no lawful cause can be shown, the prisoner must be released immediately. A habeas corpus case has priority over other cases in the order of court business.

(7) Bail: Most accused people are released on bail pending trial. They are not remanded in custody except where strictly necessary.

#### 16. Right to Privacy

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Every one has the right to the protection of the law against such interference or attacks.

(1) The common law allows people to speak and act in their own homes as they please and to carry on their daily business, provided that they do not infringe the rights of others or commit an offence.

(2) Parents are free to bring up their children as they so wish, provided that they do not infringe laws against cruelty and exposure to moral and physical danger. Parents also have to observe the law regarding compulsory education of their children.

(3) It is a criminal offence for a man to commit a homosexual act with a person under the age of 18. The age was changed from 21 to 18 with a vote of 336 to 129. A 1999 Bill to further reduce that age to 16 has failed.

(4) Privacy and the Press. Action is being taken by the Government to deal with media intrusion into the privacy of individuals. The law against libel gives protection against attacks on a person's honour and reputation.

(5) Some other forms of intrusion are criminal offenses, for example, the use of unlicensed radio transmitters for bugging, the harassment of tenants to make them quit, or the sending of unsolicited obscene material through the post. Other attempts to obtain private information may involve offenses of criminal trespass.

(6) Interception of Communications. Legislation authorizes governmental interception of postal and telephone services but only on certain limited grounds. Any interception outside these procedures is a criminal offence.

(7) Computers Under the Data Protection Act 1984 which gives effect to a Council of Europe Convention, data users are required to register a description of the personal data they hold, the purposes for which they use it, the sources from which they obtain it and the categories of person to whom they may disclose it. They must also provide an address to which data subjects may write for access to the data. Individuals have the legal right to know about the data held on them and the right to ask a court to have factually wrong or misleading data corrected or deleted. In addition they have the right to claim compensation for damages if the data are lost, inaccurate, or disclosed without authority.

### 17. Freedom of Movement

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

### 18. Freedom of Religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

(1) Worship and religious teaching take place without any interference from the State. There is complete freedom of thought, conscience or form of worship and no restriction on the right of any citizen to change his or her religion. Atheists and agnostics are also free to propagate their views.

(2) A person may, however, be held guilty of blasphemous libel if he or she publishes scurrilous and offensive references to Christianity that go beyond the limits of proper controversy. This does not apply to debate and discussion about the truth of Christian doctrines.

(3) Churches and religious societies of all kinds own property, run schools and propagate their beliefs in speech and writing. Inquiries are not made about religion in population censuses or other official returns.

(4) There is no religious bar to the holding of public office except in the case of the Sovereign who must by law be a Protestant. The Church of England and the Church of Scotland are the established 'official' churches for State ceremonies of a religious nature. Their members, however, do not obtain any advantages from being members of an established church rather than of any other church.

(5) Religious education has to be provided in all schools financed from public funds and is part of the national curriculum. Parents have the right to ask for their children to be withdrawn from such classes. Some publicly maintained schools are provided by religious denominations and receive varying amounts of public finance, according to type.

(6) Television and radio programs are broadcast on religious topics, these include religious services as well as programs in which adherents of the main religions and non-believers discuss their views. Advertising aiming to promote religious ends is not permitted on television or radio.

### 19. Freedom of Expression

Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

(1) Restrictions include the official secrets, civil defamation, criminal libel, obscenity, sedition, incitement to racial hatred, and contempt of court

(2) There are legal remedies against defamation. Fair comment on matters of public interest may be a defence. Proof that the alleged defamatory matter is true is also a defence. In the same way, frank discussion of sexual problems is not considered to be an infringement of the law on obscenity

(3) There is no State control or censorship of the press. Foreign language papers are freely imported

(4) British broadcasting is based on the tradition that it is a public service accountable to the people through Parliament. Television and radio services are provided by the British Broadcasting Corporation (BBC). Other operators are licensed individually by the Independent Television Commission (ITC) and the Radio Authority. The responsibilities of these public bodies are set out in legislation. The Government itself is not responsible for program content or broadcasters' day-to-day conduct of business

(5) The independence of the broadcasters requires them to maintain certain standards regarding programs and program content. Under the relevant legislation and the codes of practice applied by the broadcasting authorities, programs must display, as far as possible, a proper balance and wide range of subject matter, and impartiality in matters of controversy. There are also rules relating to violence and standards of taste and decency in television programs, particularly during hours when large numbers of children are likely to be watching. Broadcasters must also comply with the general law relating to obscenity and incitement to racial hatred

(6) According to 1991 European agreements on cross-border broadcasting, programs may not be indecent, contain pornography, give undue emphasis to violence, or be likely to incite racial hatred. Nor should programs unsuitable for children be broadcast when they can be expected to be watching

(7) Theater. There is no censorship of plays. It is, however, a criminal offence to present or direct an obscene performance of a play in public or private. Such a performance is defined as one which, taken as a whole, tends to 'deprave and corrupt persons who are likely to attend it'. There is a defence against an obscenity charge on the grounds that the performance is for the public good in the interest of drama, opera or literature

(8) Films and Video Government has no power to censor films. Cinemas are licensed by local government authorities, which have a legal duty to prohibit the admission of children under 16 to unsuitable films, and may prevent the showing of any film, although this particular power is hardly ever exercised. In assessing the suitability of films, authorities rely on the British Board for Film Classification, an independent non-statutory body to which films offered to the public must be submitted.

## PART 7 POLITICAL RIGHTS

### 20. General Political Rights

(1) Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of Government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

(4) Britain is a parliamentary democracy, the Government being responsible to the people through the elected House of Commons, which has the power to force a Government to resign on a vote of no-confidence. The other House in the British Parliament is the non-elected House of Lords, which is normally a chamber of discussion and revision of proposals and not a rival to the Commons. Its powers to delay legislation are limited by law.

(5) Candidature for parliamentary elections is open to anyone aged 21 and over who is eligible to vote.

(6) The secret ballot is used in all British elections. The electoral system is the simple majority system. The candidate with the largest number of votes is elected.

(7) Officials working in central and local Government have a long tradition of political neutrality. A change of Minister therefore does not involve a change of departmental staff, whose functions remain the same whichever political party is in office. Public offices are open to men and women without distinction on grounds of sex, religion, race or colour. Staff are recruited to the civil service and its executive agencies through fair and open competition solely on the basis of merit.

### 21. Political Asylum

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

(3) Britain is a signatory of the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol and continues to meet its obligations to refugees under these instruments. The Convention defines a refugee as a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

(4) Britain and the other European Community members have signed the Dublin Convention, which defines when a member State is responsible for dealing with an asylum application. Applicants may no longer lodge successive claims in different countries.

(5) Under recent legislation people are not extradited to face trial or imprisonment if they face persecution on grounds of race, religion, nationality or political opinion. British extradition law prevents extradition for political offenses.

## **22. Nationality**

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

(3) British citizenship is acquired automatically at birth by a child born in Britain if the father (in cases of legitimate birth) or mother is a British citizen or is settled in Britain.

(4) British Dependent Territories citizens, British Nationals (Overseas), British overseas citizens, British subjects under the Citizenship Act and British protected persons are entitled to be registered as British citizens after five years' residence in Britain. British Dependent Territories citizens from Gibraltar have an absolute right to be registered as British citizens without needing to reside in Britain.

(5) Commonwealth citizens, citizens of the Irish Republic and foreign nationals can acquire British citizenship by naturalization.

(6) British citizenship can be renounced by a person if he or she possesses, or is about to acquire, the nationality or citizenship of another country.

(7) Under the Hong Kong Act 1985 citizens are entitled to acquire a new form of nationality, that of British National (Overseas), together with a passport showing that an entry clearance is not required to visit Britain. In April 1990 legislation was passed to give British citizenship to 50,000 key people in Hong Kong and their dependents without their having to leave the territory to qualify. Its purpose is to persuade these people—selected under a points system—to remain in Hong Kong so that the territory can remain stable and prosperous up to the change to Chinese sovereignty in 1997 and beyond.

## **23. Assemblies and Associations**

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

## **PART 8**

### **SOCIAL RIGHTS**

#### **24. General Social Rights**

Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality

#### **25. Work**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment

(2) Everyone, without any discrimination, has the right to equal pay for equal work

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection

(4) Everyone has the right to form and to join trade unions for the protection of his interests

(5) The Employment Service, an executive agency of the Department of Employment, helps unemployed people to find work through its job placement and other services and pays benefits and allowances to those entitled to them

(6) A fundamental reform of the vocational qualifications system is being undertaken by the National Council for Vocational Qualifications. It aims to develop a system of nationally recognized vocational qualifications based on standards of workplace competence set by employers. Equal esteem for academic and vocational qualifications is being promoted with clearer and more accessible paths between them

(7) In most industries the pay and conditions of workers are settled by national and/or plant bargaining between employers and trade unions

(8) Laws impose duties on employers and others to ensure the health safety and welfare of their employees in factories, offices, mines, building sites and all other work activities

(9) People may join trade unions, which have members in virtually every occupation and some 10 million members in all. Dismissals for union membership or non-membership are automatically unfair. It is also unlawful for an employer to refuse to employ an individual on the grounds of that individual's membership or non-membership of a trade union

#### **26. Working hours**

Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay. The basic working

week in Great Britain is about 37 5 to 40 hours for manual work and 35 to 38 for non-manual work A five-day week is usually worked Overtime is paid at higher rates

## 27. Home

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

(2) Motherhood and childhood are entitled to special care and assistance All children, whether born in or out of wedlock, shall enjoy the same social protection

(3) The National Health Service (NHS) provides comprehensive health care to all residents Treatment is based on medical priority regardless of patients' income and is financed mainly out of general taxation Patients pay charges for prescriptions although in practice some 75 per cent are supplied free, since charges do not apply to people on low incomes, children, expectant mothers, pensioners and other groups

(4) Patients are free to seek private medical treatment and doctors, dentists, opticians and pharmacists are able to practice privately NHS hospital doctors, too, can practice privately, subject to certain rules There is limited provision for them to treat their private patients in NHS hospitals NHS patients are sometimes treated at public expense in private hospitals Some 7 5 million people are covered by private medical insurance

(5) A local authority may apply to the court for a child care order This can only be made by the court if it is satisfied that the child is suffering, or is likely to suffer, significant harm

(6) Children who break the criminal law are brought before youth courts

(7) The social security system aims to provide financial help to people who are elderly, sick, disabled, unemployed, widowed or bringing up children The system includes contributory national insurance benefits covering sickness, invalidity, unemployment, widowhood, and retirement There is also statutory sick pay and maternity pay paid for their employees by employers Another part of the system consists of non-contributory benefits such as child benefit paid for every child in a family and a range of benefits for severely disabled people and those looking after them

(8) Preventive services are designed to safeguard the health of pregnant women and mothers with young children Pregnant working women have the right to visit clinics during working hours Nearly all women have their babies in hospital, returning home shortly after to be attended by a midwife or health visitor and, where necessary, the family doctor Child health centers check the physical and mental health of pre-school children There are voluntary programs of immunization against diphtheria, measles, rubella (women of

child-bearing age and girls only), poliomyelitis tetanus tuberculosis and whooping cough. There is a combined vaccination against measles, mumps and rubella for children in the second year of life.

(9) Statutory maternity pay is available for up to 18 weeks when a woman is away from work because of her pregnancy. The pay is 90 per cent of earnings for six weeks followed by a flat rate payment for a further 12 weeks. To qualify, a woman must have worked for the same employer for at least two years, where a woman has been employed for between six months and two years, she is entitled to payments for the full 18 weeks at the flat rate only. If a woman does not qualify for maternity pay, she may receive a maternity allowance if she has worked for an employer or as a self-employed person and paid a specified number of national insurance contributions. The allowance is paid for 18 weeks.

(10) Britain is a party to the Council of Europe's convention on the legal status of children born to unmarried parents. This provides for common rules under which the legal status of such children is the same as for those born to a married couple. Legislation has been passed to remove former legal disadvantages suffered by children of unmarried parents.

(11) Under the Abortion Act 1967, as amended in 1990, a pregnancy may only be terminated if two registered doctors consider that this step is justified in terms of one or more of the grounds specified in the Act. The Act does not apply in Northern Ireland.

(12) The birth of the world's first 'test tube baby' took place in Britain in 1978, using the technique of in-vitro fertilization. The social, ethical, and legal implications were examined by a committee of enquiry under Baroness Warnock, which concluded that certain specialized forms of infertility treatment, including artificial insemination by donor and in-vitro fertilization, were ethically acceptable. The committee also considered that research on human embryos could take place under certain conditions.

(13) About two-thirds of the housing stock in Britain is owner-occupied. With a few exceptions, secure public sector tenants have the right to buy their house or flat at a discount if they have been public sector tenants for at least two years. Under legislation passed in 1988 a Housing Action Trust can be proposed for an area of public sector housing in England and Wales. If the majority of tenants vote in support of a proposal to set up a Trust in their area, the Trust, which is a public body, takes over the ownership of the housing in order to undertake major physical, social and economic regeneration. Once the work is completed, the tenants decide on the future of their homes: such as a transfer to a housing association, formation of a tenants co-operative or a return to the local government authority. Additional low-cost housing is provided by non-profit-making housing associations.

(14) Local government authorities have a statutory duty to ensure that accommodation is provided for people who are or are about to become unintentionally homeless.

(15) It is a criminal offence for a landlord to harass tenants. If tenants are driven out by harassment or illegally evicted, they must be compensated. If a landlord harasses or evicts a tenant in order to re-let at market rent, the courts may award damages to the tenant based on the profit made by the landlord. As a general principle, tenants and most other residential occupiers cannot be evicted without a court order.

## 28. Education, Science, and the Arts

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

(4) The State education system is free, but a small proportion of children attend private fee-paying schools. Local education authorities have to meet the parents' wishes unless the school is full or, if selective, the child does not meet required academic standards. Secondary schools—those catering for 11 to 16 year olds—in England and Wales are required to admit pupils up to the limit of their available physical capacity if there is sufficient demand on behalf of eligible children by parents.

(5) Children whose learning difficulties are severe or complex, wherever possible, are educated in ordinary schools.

## 29. Culture

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

(3) The Government and local government authorities give financial support to the arts. The preservation of the artistic heritage is encouraged by tax relief and other measures including certain controls on the export of works of art. The Arts Council allocates funds to the major opera, dance, and drama companies, symphony orchestras, small touring theaters, experimental groups, and creative artists.

(4) Original literary, dramatic, musical, or artistic works, films, and sound recordings are automatically protected. The copyright owner has rights against unauthorized reproduction, public performance, and broadcasting of

his or her work. In most cases the author is the first owner of the copyright, its term being the life of the author and a period of 50 years after his or her death (50 years from the date of release for films and sound recordings). Under legislation passed in 1988 authors have the right to be identified on their works and to object to any unjustified modifications of them. The law also protects performers against the trading in unauthorized recordings of live performance, the term of protection being 50 years from the year in which the performance is given. A copyright work first published in Britain has automatic copyright in all other countries which are members of the Berne Copyright Convention and the Universal Copyright Convention. The law secures the rights of the originators of inventions, new industrial designs, and trade marks. Protection is also available under the European Patent Convention and the Patent Co-operation Treaty; benefits may be claimed in other countries under the International Convention for the Protection of Industrial Property.

(5) The Government has taken steps to protect the ownership of ideas by means of patents, registered designs, trade marks, and copyright. Measures include the extension of copyright protection to computer software owners, the extension of trade marks to cover services, and powers to enable customs authorities to prevent the entry of counterfeit goods. Legislation passed in 1988 made provision for a new form of protection for designs and made litigation regarding patents simpler and cheaper.

## PART 9 RESTRICTIONS

### 30. Restrictions

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

## CHAPTER 2 STATE ORGANIZATION

### PART 1 OVERVIEW

#### 31. Basic Structure

(1) The British constitution is made up of statute law, common law, and conventions. Conventions are rules and practices which are not legally

enforceable but which are regarded as indispensable to the working of Government, many are derived from the historical events through which the British system of Government has evolved

(2) The Queen is head of State and an important symbol of national unity. She is

- head of the executive,
- an integral part of the legislature,
- head of the judiciary,
- Commander-in-Chief of all the Armed Forces of the Crown, and
- the 'Supreme Governor' of the established Church of England

The Queen acts on the advice of her Ministers. Britain is governed by *Her Majesty's Government in the name of the Queen*. In international affairs the Queen, as head of State, has the power to declare war and make peace, to recognize foreign States and Governments, to conclude treaties and to annex or cede territory.

(3) Three elements make up Parliament—the Queen, the House of Lords and the elected House of Commons. The agreement of all three is normally required for legislation. As there are no legal restraints imposed by a written constitution, Parliament can make or change any law. It can even prolong its own life beyond the normal period without consulting the electorate. In practice, however, Parliament does not assert its supremacy in this way.

(4) The validity of an Act of Parliament, once passed, cannot be disputed in the law courts. The House of Commons is directly responsible to the electorate, and in this century the House of Lords has recognized the supremacy of the elected chamber. The system of party government helps to ensure that Parliament legislates with its responsibility to the electorate in mind.

(5) A Parliament has a maximum duration of five years, but in practice general elections are usually held before the end of this term. The maximum life has been prolonged by legislation in rare circumstances such as the two world wars.

## PART 2

### PARLIAMENT

#### 32. House of Commons

(1) **Officers** The officers of the House of Commons are the Speaker, three Deputy Speakers and other permanent officers and staff (Clerks, Serjeants, Library, Official Report, Finance and Administration, and Refreshment).

(2) **Electorate** British citizens, together with citizens of other Commonwealth countries and citizens of the Irish Republic resident in Britain, may vote provided they are aged 18 or over, included in the annual register of electors for the constituency, and not subject to any disqualification.

(3) Elections For electoral purposes Britain is divided into 651 constituencies, each of which returns one member to the House of Commons. Each elector may cast one vote, normally in person at a polling station. Voting is not compulsory. 76.9 per cent of a total electorate of 43.3 million people voted in the general election in April 1992. The simple majority system of voting is used. Candidates are elected if they have more votes than any of the other candidates, although not necessarily an absolute majority over all other candidates.

(4) Candidates British citizens and citizens of other Commonwealth countries, together with citizens of the Irish Republic, may stand for election as MPs provided they are aged 21 or over and are not disqualified. A candidate must also deposit 500 pounds, which is returned if he or she receives 5 per cent or more of the votes cast. The maximum sum a candidate may spend on a general election campaign is 4,330 pounds plus 3.7 pence for each elector in a borough constituency or 1.9 pence for each elector in a county constituency. All election expenses, apart from the candidate's personal expenses, are subject to the statutory limit.

### 33. Parties

(1) Parties are not registered or formally recognized in law, but in practice most candidates in elections, and almost all winning candidates, belong to one of the main parties. In 1992 General Elections, the Conservative Party reached 42%, Labour Party 35%, and the Liberal Democrats 18% of votes.

(2) Since 1945 either the Conservative Party, whose origins go back to the eighteenth century, or the Labour Party, which emerged in the last decade of the nineteenth century, has held power. A new party—the Liberal Democrats—was formed in 1988 when the Liberal Party, which could trace its origins to the eighteenth century, merged with the Social Democratic Party, which was formed in 1981.

(3) Leaders of the Government and Opposition sit on the front benches on either side of the Commons chamber with their supporters—the backbenchers—sitting behind them. Inside Parliament, party control is exercised by the Chief Whips and their assistants, who are chosen within the party.

(4) Annual assistance from public funds helps opposition parties carry out their parliamentary work at Westminster. It is limited to parties which had at least two members elected at the previous general election or one member elected and a minimum of 150,000 votes cast. The amount is 2,550 pounds for every seat won, plus 5.10 pounds for every 200 votes.

### 34. Procedure

(1) Each subject starts off as a *proposal or motion* by a member. At the end of each debate the question may be decided without voting or by a simple majority vote. The Speaker has discretion on whether to allow a motion to end discussion so that a matter may be put to the vote and has powers to put a stop to irrelevance and repetition in debate and to save time in other ways.

(2) In a tied vote the Speaker gives a casting vote, without expressing an opinion on the merits of the question

(3) Members with a financial interest in a debate in the House must declare it when speaking. To act as a disqualification from voting the interest must be direct, immediate and personal

(4) Proceedings of both Houses are normally public and visitors can watch the proceedings from the galleries of both chambers. The minutes and speeches are published daily. The records of the Lords from 1497 and of the Commons from 1547, together with the parliamentary and political papers of a number of former members of both Houses, are available to the public through the House of Lords Record Office. The proceedings of both Houses of Parliament may be broadcast on television and radio, either live or, more usually, in recorded or edited form

### 35. Legislation

(1) Bills Draft laws take the form of parliamentary Bills. Most are public Bills involving measures relating to public policy. Private Bills deal with matters of individual, corporate or local interest. Proposals for legislative changes are sometimes set out in government 'White Papers'. Consultation papers, sometimes called 'Green Papers', set out Government proposals which are still taking shape and seek comments from the public.

(2) A draft law is given a first reading in the House of Commons without debate, this is followed by a thorough debate on general principles at second reading. It is then given detailed consideration, clause by clause, by a Commons Committee before report stage in the whole House, and a third and final reading.

(3) Bills must normally be passed by both Houses. They must then receive the Royal Assent before becoming Acts. In practice this is a formality.

### 36. Committees

(1) Standing Committees debate and consider amendments to public Bills at the committee stage and, in certain cases, discuss them at the second reading stage. Ordinary Standing Committees do not have names but are referred to simply as Standing Committee A, B, C, and so on, a new set of members are appointed to them to consider each Bill. Each committee has between 16 and 50 members, with a party balance reflecting as far as possible that in the House as a whole.

(2) Select Committees are appointed, normally for the duration of a Parliament, to examine subjects by taking written and oral evidence. After private discussion they report their conclusions and recommendations. Committees include those on European Legislation, Science and Technology, Public Accounts, Members' Interests, and the Parliamentary Commissioner for Administration.

(3) Party Committees In addition to the official committees of the two Houses there are several unofficial party organizations or committees. The Conservative and Unionist Members' Committee (the 1922 Committee)

consists of the backbench membership of the party in the House of Commons. When the Conservative Party is in office, Ministers attend its meetings by invitation and not by right. When the party is in opposition, the whole membership of the party may attend meetings. The leader appoints a Consultative Committee, which acts as the party's 'shadow cabinet'.

### **37. House of Lords**

There are opportunities for criticism and examination of Government policy in the House of Lords at daily question time and during debates on general motions. Other opportunities include 'unstarred' questions, which can be debated at the end of the day's business, and debates on proposed legislation.

### **38. Finances**

The Finance Act is the most important of the annual statutes, and authorizes the raising of revenue. The legislation is based on the Chancellor of the Exchequer's Budget Statement, normally made in March or April each year. It includes a review of the public finances of the previous year and proposals for the estimated expenditure of the coming year. Scrutiny of public expenditure is carried out by House of Commons Select Committees.

### **39. European Community Affairs**

To keep the two Houses informed of European Community developments, and to enable them to scrutinise and debate Community policies and proposals, there is a Select Committee in each House and two Standing Committees debate specific European legislative proposals in the House of Commons. Ministers also make regular statements about Community business.

### **40. Members of Parliament**

(1) Members of Parliament represent all their constituents, including those who voted for other parties.

(2) The privileges of the members of the Commons include freedom of speech, freedom from arrest in civil actions, exemption from serving on juries, or being compelled to attend court as witnesses, and the right of access to the Crown, which is a collective privilege of the House.

### **41. Parliamentary Ombudsman**

The Parliamentary Commissioner for Administration investigates, independently, complaints of maladministration when asked to do so by MPs on behalf of members of the public. The Commissioner must report annually to Parliament. He or she also publishes details of selected investigations at quarterly intervals and may submit other reports where necessary.

### PART 3 GOVERNMENT

#### 42. Composition

(1) The Prime Minister is appointed by the Queen, and all other Ministers are appointed by the Queen on the recommendation of the Prime Minister. Most Ministers are members of the Commons, although the Government is also fully represented by Ministers in the Lords. The Lord Chancellor is always a member of the House of Lords.

(2) The composition of Governments can vary both in the number of Ministers and in the titles of some offices.

(3) The Prime Minister is, by tradition, First Lord of the Treasury and Minister for the Civil Service. The Prime Minister's office is located at 10 Downing Street in central London.

(4) Ministers in charge of Government departments are usually in the Cabinet; they are known as 'Secretary of State' or 'Minister', or may have a special title, as in the case of the Chancellor of the Exchequer.

(5) To keep the workload of the Cabinet within manageable limits, a great deal of work is carried on through the committee system. The membership of all Ministerial Cabinet Committees is published.

(6) The doctrine of collective responsibility means that the Cabinet acts unanimously even when Cabinet Ministers do not all agree on a subject.

#### 43. Lobby

As press adviser to the Prime Minister, the Prime Minister's Press Secretary and other staff in the Prime Minister's Press Office have direct contact with the parliamentary press through regular meetings with the Lobby correspondents. The Lobby correspondents are a group of political correspondents who have the special privilege of access to the Lobby of the House of Commons where they can talk privately to Government Ministers and other members of the House. The Prime Minister's Press Office is the accepted channel through which information about parliamentary business is passed to the media.

#### 44. Privy Council

The main function of the Privy Council is to advise the Queen to approve Orders in Council—those made under prerogative powers and those made under statutory powers. Cabinet Ministers must be Privy Counsellors and are sworn in on first assuming office.

### PART 4 LOCAL GOVERNMENT

#### 45. Local Authority Councils

(1) Local authority councils consist of elected unpaid councillors, elected on a similar basis to parliamentary elections. They serve for four years.

(2) In the metropolitan counties, district councils are responsible for all services apart from the police, the fire service and public transport and in some areas, waste regulation and disposal. In Greater London the boroughs and the City Corporation have similar functions but London's metropolitan police force is directly responsible to the Home Secretary.

(3) Local authorities in Great Britain raise revenue through a council tax. Each household receives a single bill based on the market value of property and the number of adults living in it. Couples on low incomes will be entitled to rebates of up to 100 per cent on their council tax bills.

## PART 5 JUDICIARY

### 46. Legal System in General

(1) Although Britain is a unitary State, England and Wales, Scotland and Northern Ireland all have their own legal systems, with considerable differences in law, organization and practice. However, a large amount of modern legislation applies throughout Britain. The law is divided into criminal law and civil law, the latter regulates the conduct of people in ordinary relations with one another. The distinction between the two is reflected in the procedures used, the courts in which cases may be heard and the sanctions which may be applied.

(2) The legal system of England and Wales comprises both an historic body of conventions known as common law and equity, and parliamentary and European Community legislation. Common law, which is based on custom and interpreted in court cases by Judges, has never been precisely defined or codified. It forms the basis of the law except when superseded by legislation. Equity law consists of a body of historic rules and principles which are applied by the courts. The English legal system is therefore distinct from many of those of Western Europe, which have codes derived from Roman law.

(3) European Community law, which applies throughout Britain, is confined mainly to economic and social matters, in certain circumstances it takes precedence over domestic law. It is normally applied by the domestic courts, but the most authoritative rulings are given by the Community's Court of Justice.

### 47. Judiciary in General

(1) The judiciary is independent of the executive: its judgments are not subject to ministerial direction or control. The Prime Minister recommends the highest judicial appointments to the Crown.

(2) The Lord Chancellor is head of the judiciary, except in Scotland. His responsibilities include court procedure and the administration of courts.

### 48. Criminal Courts

(1) Summary or less serious offenses, which make up the vast majority of criminal cases, are tried in England and Wales by unpaid lay Magistrates—

Justices of the Peace (JPs), although in areas with a heavy workload there are a number of full time, stipendiary Magistrates. More serious offenses are tried by the Crown Court, presided over by a Judge sitting with a jury. The Crown Court sits at about 90 centers and is presided over by High Court judges, full time 'Circuit Judges' and part time recorders.

(2) Appeals from the Magistrates' courts go before the Crown Court or the High Court. Appeals from the Crown Court are made to the Court of Appeal (Criminal Division). The House of Lords is the final appeal court in all cases.

#### 49. Civil Courts

(1) Magistrates' courts have limited civil jurisdiction. The 286 county courts have a wider jurisdiction, cases are normally tried by Judges sitting alone. The 80 or so Judges in the High Court cover civil cases and some criminal cases, and also deal with the appeals. The High Court sits at the Royal Courts of Justice in London or at 26 district registries. Appeals from the High Court are heard in the Court of Appeal (Civil Division), and may go on to the House of Lords, the final court of appeal.

#### 50. Tribunals

(1) Tribunals are a specialized group of judicial bodies, akin to courts of law. They are normally set up under statutory powers which also govern their constitution, functions and procedure. Tribunals often consist of lay people, but they are generally chaired by someone who is legally qualified. They tend to be less expensive, and less formal, than courts of law.

(2) Independently of the executive, tribunals decide the rights and obligations of private citizens towards one another or towards a Government department or other public authority. Important examples are industrial tribunals, rent tribunals and social security appeal tribunals.

(3) In many cases there is a right of appeal to a higher tribunal and, on points of law, to the courts. Tribunals do not normally employ staff or spend money themselves, but their expenses are paid by the Government departments concerned. An independent Council on Tribunals exercises general supervision over many tribunals.

#### 51. European Courts

(1) The Court of Justice consists of 13 Judges. It interprets and adjudicates on the meaning of the treaties and on measures taken by the Council of Ministers and the Commission. It also hears complaints and appeals brought by or against Community institutions, member states or individuals and gives preliminary rulings on cases referred by courts in member states. It represents the final authority on all aspects of Community law.

(2) The Single European Act of 1986 provided for a Court of First Instance to relieve the Court of Justice of a substantial part of its workload. The new court began working in 1989.

# 39

## CONSTITUTION OF UNITED STATES OF AMERICA

{Adopted on 17 Sep 1787}

{Effective since 4 March 1789}

### PREAMBLE

We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America

### ARTICLE I LEGISLATURE

#### 1 Legislative Power Vested

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

#### 2. House of Representatives

(1) The House of Representatives shall be composed of Members chosen every second Year by the People of the several States and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature

(2) No Person shall be a Representative who shall not have attained to the Age of twenty five Years and been seven Years a Citizen of the United States and who shall not when elected be an Inhabitant of that State in which he shall be chosen

(3) Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

(4) When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.

(5) The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

### 3. Senate

(1) The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

(2) Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year, and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

(3) No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

(4) The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

(5) The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

(6) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside.

And no person shall be convicted without the concurrence of two-thirds of the members present.

(7) Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to Law.

#### 4. Elections of Senators and Representatives

(1) The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators

(2) The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by Law appoint a different day

#### 5. Rules of House and Senate

(1) Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide

(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member.

(3) Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal

(4) Neither House, during the session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting

#### 6. Compensation and Privileges

(1) The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance, at the session of their respective Houses, and in going to and returning from the same, and for any speech or debate in either House; they shall not be questioned in any other place

(2) No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, who shall have been created in the United States who shall have been created in the United States who shall have been created in the United States

been increased during such time, and no person holding any office under the United States, shall be a member of either House during his continuance in office

### 7. Bills

(1) All Bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other Bills

(2) Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States, If he approve he shall sign it, but if not he shall return it, with his objections to the House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return in which case it shall not be a law.

(3) Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a Bill.

### 8. Legislative Power

(1) The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States,

(2) To borrow money on the credit of the United States,

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes,

(4) To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States,

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures,

(6) To provide for the punishment of counterfeiting the securities and current coin of the United States,

(7) To establish Post Offices and Post Roads.

(8) To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

(9) To constitute tribunals inferior to the Supreme Court.

(10) To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

(11) To declare war, grant Letters of marque and reprisal, and make rules concerning captures on land and water.

(12) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(13) To provide and maintain a navy,

(14) To make rules for the Government and regulation of the land and naval forces,

(15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions,

(16) To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress,

(17) To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, and

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof

## 9. Limits on Legislative Power

(1) The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight but a tax or duty may be imposed on such importation not exceeding ten dollars for each person

(2) The privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it

(3) No Bill of Attainder or ex post facto law shall be passed

(4) No capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken

- (5) No tax or duty shall be laid on Articles exported from any State
- (6) No preference shall be given by any regulation of commerce or Revenue to the Ports of one State over those of another nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another
- (7) No money shall be drawn from the treasury, but in consequence of appropriations made by law and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time
- (8) No title of nobility shall be granted by the United States And no Person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State

#### 10. Limits on States

(1) No State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass any Bill of Attainder, ex post facto law, or law impairing the obligation of contracts, or grant any Title of Nobility

(2) No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws and the net Produce of all duties and imposts, laid by any state on imports or exports, shall be for the Use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress

(3) No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay

## ARTICLE II PRESIDENCY

### 1. Election, Removal

(1) The executive power shall be vested in a President of the United States of America He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows

(2) Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector

(3) The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by Ballot one of them for President, and if no person have a Majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the Representation from each State having one vote, a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greater number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

(4) The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

(5) No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution shall be eligible to the office of President, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

(6) In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability both of the President and Vice President declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.

(7) The President shall at stated times receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other Emolument from the United States, or any of them.

(8) Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve protect and defend the Constitution of the United States."

## 2. Presidential Powers

(1) The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States, he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices, and he shall have Power to grant Reprieves and Pardons for offenses against the United States, except in Cases of Impeachment

(2) He shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the Courts of law, or in the heads of departments

(3) The President shall have Power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next Session

## 3. Presidential Rights and Duties

He shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient, he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, he shall receive Ambassadors and other public Ministers, he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States

## 4. Impeachment

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors

# ARTICLE III JUDICIARY

## 1. Judicial Power

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office

## 2 Scope of Judicial Power

(1) The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their Authority, to all cases affecting ambassadors, other public Ministers and Consuls, to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under the grants of different States, and between a State or the citizens thereof, and foreign States, citizens or subjects.

(2) In all cases affecting ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

(3) The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed, but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

## 3. Treason

(1) Treason against the United States, shall consist only in levying war against them, or, in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on Confession in open court.

(2) The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

# ARTICLE IV STATES

## 1 Faith and Credit

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

## 2. Privileges and Immunities, Extradiction, Fugitive Slaves

(1) The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

(2) A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

(3) No person held to service or labour in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due

### 3. Admission of States

(1) New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

(2) The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State

### 4. Guarantees to States

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence

## ARTICLE V

### AMENDMENT PROCEEDINGS

The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year One thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the first article, and that no State, without its consent, shall be deprived of its equal suffrage in the senate

## ARTICLE VI

### CONSTITUTIONAL STATUS

(1) All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation

(2) This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land,

and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding

(3) The senators and representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States

## **ARTICLE VII**

### **RATIFICATION**

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same

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